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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
CASE NO.: 980864

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THE PEOPLE OF THE STATE OF CALIFORNIA, et al., :
:
Plaintiffs, : VOLUME II
VS. :
:PAGES 187 - 327
PHILIP MORRIS, INC., et al., :
:
Defendants. :
- - - - - - - - - - - - X

Videotaped Deposition of EDWARD M. BLACKMER

(Taken by Plaintiffs)

Winston-Salem, North Carolina

May 20, 1998

Reported by: Geralyn M. LaGrange
Registered Professional Reporter
Notary Public

APPEARANCES:

For the Plaintiffs:

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Also Present:

Larry Schadle, Videographer

Videotaped Deposition of EDWARD M. BLACKMER, taken by the Plaintiffs at Womble Carlyle Sandridge & Rice, 200 West Second Street, Winston-Salem, North Carolina, on Wednesday, the 20th day of May, 1998, at 9:30 a.m., before Geralyn M. LaGrange, Registered Professional Reporter and Notary Public.

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PROCEEDINGS

Whereupon, EDWARD M. BLACKMER, having been previously sworn, was examined and testified as follows:

THE VIDEOGRAPHER: This is the continuing deposition of Mr. Edward Blackmer. Today's date is May 20th, 1998. The time is 9:29. This is tape number four.

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. SOBOL:

Q. Good morning, Mr. Blackmer.

A. Good morning, Mr. Sobol.

THE VIDEOGRAPHER: Mr. Sobol, your mike.

BY MR. SOBOL:

Q. You're still under oath.
You know that, right?

A. Yes, sir.

Q. You've had a chance to reflect on your testimony yesterday during our recess overnight?

A. Somewhat, sir.

Q. Anything about your testimony yesterday inaccurate now that you've had a chance to reflect upon it?

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A. Inaccurate, no, sir.
Q. Now, I believe yesterday you testified that the primary function of marketing operations was to execute all marketing strategies for all brands.
Is that your understanding?
A. Sir, there may be some activities that marketing operations is not directly involved in. It would certainly be fair to say that we execute most of the marketing strategies for -- for the brands.
Q. For all brands? Let me ask you this.
A. Yes.
Q. Marketing operations execute most marketing strategies for most brands?
A. That would be fair, sir.
Q. And you're the head of that department?
A. That's correct.
Q. But you don't know what any of the marketing strategies are for any of the brands; is that right?
A. Mr. Sobol, I don't have detailed knowledge of the marketing strategies for most of the brands.

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Q. Do you know the -- do you have any general knowledge as to the marketing strategies for any of the brands?
A. Yes, sir, I have some general knowledge.
Q. What's the marketing strategy for Camel filters?
A. Mr. Sobol, I don't have detailed knowledge of the marketing strategy for Camel filters.
Q. Why don't you tell me what -- what it is you do know and what it is you think you don't know that may be out there.
A. In general terms, I believe that the marketing strategy for -- for Camel filters is to gain adult smokers share of market for the brand, most of which would come from our primary competitor, the brand Marlboro.
Q. Anything else more specific that you know about the marketing strategy of Camel filters?
A. Not in precise terms, sir.
Q. In general terms?
A. In general terms, I believe it would be to convey the brand's advertising message to adult smokers. What I don't have detailed

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knowledge of at this point is what their precise advertising strategies are.
Q. Do you have any other knowledge concerning the marketing strategies for Camel filters?
A. An additional strategy would most likely include, Mr. Sobol, the protection reinforcement of the brand's message among its current franchise.
Q. Anything else about the marketing strategy for Camel filters which you're aware?
A. That's all I can give you off the top of my head right now, sir.
Q. All right. Going to the first aspect of the strategy which you referred to, which is "Gain adult smoker share of the market," is that a strategy that applies to every cigarette brand?
A. Yes, sir. I believe I included in my response to that question who -- smokers of -- of the Marlboro brand that would not extend across all cigarette brands.
Q. Is it the marketing strategy for all of RJR brands to gain adult smoker share of the market irrespective of where they gain that market share?

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A. For some brands, it may not be that, sir.
Q. Which brands are those? Which brands does RJR not seek to gain adult smoker share of the market?
A. An example of that might be, Mr. Sobol, brands which are not extensively advertised or promoted today, brands like Vantage, Now, and More, where those marketing activities that we do have in place for those brands are probably more oriented solely to the current franchise.
Q. The other marketing strategy you mentioned to convey the advertising message to adult smokers, is that a strategy that applies to all RJR cigarette brands?
A. No, sir, it would not.
Q. Which brands does RJR not seek to convey its advertising message to adult smokers?
A. Brands such as that would include those that I mentioned just a moment ago, brands like Vantage, Now, and More which are at present not advertised brands for RJR.
Q. Is it that RJR doesn't currently engage in any marketing of Vantage, More, or Now?

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A. I can't be absolutely sure of that, Mr. Sobol. I am generally aware that there are no -- there are no significant expenditures against those brands for marketing activity.

Q. And by "significant expenditure," can you give me a ball park of what you mean, figure?

A. Well, sir, in my own mind, that would -- that would include anything less than a million dollars, for example.

Q. Other than those RJR brand cigarettes for which there is no significant expenditure towards marketing efforts, are there any RJR brand cigarettes which do not seek to gain adult smoker share of the market?

A. To the best of my knowledge, Mr. Sobol -- I'm not sure, Mr. Sobol.

Q. What about Camel Lights? Does RJR seek to gain the adult smoker share of the market -- market for Camel Lights?

A. To the best of my knowledge, that would be a -- a -- an objective for the brand, yes, sir.

Q. And would that be an objective for Winstons?

A. That would be an objective for

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Winston, I believe, so today, sir.

Q. The whole line of Winston products?

A. I'm not sure it would include the entire line of the Winston product -- products at this point, sir.

Q. Can you identify now any RJR cigarette brands for which there is a significant expenditure of funds for marketing efforts for which RJR does not seek to gain the adult smoker share of the market?

A. I cannot think of any right now, sir.

Q. Can you identify an RJR brand for which RJR expends significant resources in marketing efforts and for which there is not a marketing strategy to convey an advertising message to adult smokers?

A. Mr. Sobol, I'm sorry. I'm having a little trouble following that question. If you could rephrase it, please.

Q. Certainly.

Can you identify for me, sir, all RJR cigarette brands for which there is a significant expenditure of funds directed towards marketing efforts in which the marketing strategy does not include conveying the advertising message to adult

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smokers?

A. Mr. Sobol, I'm sorry, I'm still having trouble following the question.

MR. SOBOL: Read -- read it back, please.

(QUESTION WAS READ BACK)

THE WITNESS: To the best of my ability to answer that question, Mr. Sobol, I would say there are none.

BY MR. SOBOL:

Q. And does RJR expend significant amount of marketing funds for any cigarette brands in which the marketing strategy does not include reinforcement among the current franchise?

A. I'm sorry, sir. I need that question read back.

Q. I want you to identify for me all the RJR cigarette brands for which RJR dedicates a significant amount of resources towards marketing efforts, but for which the marketing strategy does not include a reinforcement among the current franchise.

A. I would say in my judgment, all of our brands would -- would -- would have that, sir.

Q. All right. So, these three aspects

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of the marketing strategy which you identified for me for Camel filters -- gaining adult smoker share of the market, conveying the advertising message to adult smokers, and reinforcement among the current franchise -- actually apply to all the RJR brands which are actively marketed; is that correct, sir?

A. To the best of my knowledge, they -- they would include that, sir.

Q. All right. Do you know anything about the marketing strategy for Camel filters which specifically apply to Camel filters?

A. No, sir, I do not.

Q. Okay. Is there any aspect of the marketing strategy for Camel filters which is unique to Camel filters of which you're aware?

A. No, sir, I'm not aware of that.

Q. Yet, it's the function of the marketing operations group which you had to execute most of the marketing strategies for most of the brands; is that correct?

A. Yes, sir. I -- I -- I think it would be fair to -- to say that, particularly if -- if you -- if you include the -- in the definition of marketing strategies individual programs which -- which my groups are -- are more focused on.

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Q. In preparation for your deposition, did you meet with Ms. Brinkley?

A. I did not, sir.

Q. Are the efforts which RJR takes to ensure that minors do not purchase cigarettes in either California, Massachusetts, does that fall within the responsibility of marketing -- marketing operations?

A. Could you repeat the question, please, sir?

Q. Is marketing operations at all responsible for ensuring that minors do not buy cigarettes in the State of California?

MR. OPSITNICK: I'll object to the question as ambiguous.

BY MR. SOBOL:

Q. Why don't you identify for me, Mr. Blackmer, all the efforts that RJR -- that the marketing operations group takes to ensure that minors do not purchase cigarettes in the State of California.

A. Sir, if by that you mean -- if by that you mean the actual purchase of cigarettes, marketing operations -- marketing operations would have minimal level of involvement in -- in that

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activity. If by that you mean what -- what does marketing operations do to -- to deal with exposure of our materials to youth, there are a number of -- of activities in which we're involved to include an understanding of the cigarette advertising and promotion code, to include specific measures in policies related to our active mailing lists in the database marketing group. Those are just some examples, Mr. Sobol. There may be others.

Q. But you're unaware of any marketing strategies specific, say, to Camel filters that ensures that the advertising or the overall marketing strategy does not appeal to youth; is that right?

A. Mr. Sobol, I believe that each brand's marketing strategy would have included in it a -- a statement about the -- the prime prospect for -- for their particular efforts, all of which I think you would find would -- would have a reference to adult smokers 21 plus.

Q. I'm sorry. What would have a reference to 21 plus?

A. I believe you would find it in -- in a brand's marketing plan, whether it would be stated as a marketing strategy or advertising

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strategy or objective statement. I can't precisely tell you where one would find that within a brand's marketing plan.

Q. But it's your belief that at least all the marketing plans in which you're aware of at RJR state that they should not appeal to people under the age of 21?

MR. OPSITNICK: Objection, mischaracterizes his testimony.

BY MR. SOBOL:

Q. Why don't you help me out. What did -- I'm sorry.

A. I think I -- I think I told you that it would be my expectation and belief that an individual brand's marketing strategy statement or somewhere else stated in that -- in that plan would include a -- a prime prospect definition of smokers at least 21 plus.

Q. And these would be in the marketing plans?

A. That's normally where one would find such --

Q. And do you review the marketing plans?

A. I do not review the individual

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marketing plans.

Q. Can you identify for me a single marketing plan where you've seen that prime prospect definition of at least 21 plus?

A. I cannot, sir.

Q. The marketing --

A. Mr. Sobol, I'd -- I'd like to add, if I could, once again, a reference to the cigarette advertising and promotion code, that should be implicit in -- in everything we do. I recall a short time ago, perhaps during the first quarter of this year, a reinforcement of the department in the company's policy on such issues as making sure that our advertising is -- is adult oriented in a memo from -- from Ms. Beasley that was sent to all members of -- of the marketing department.

Q. Are you generally aware, sir, of the current advertising campaigns on the market for RJR cigarettes?

A. Mr. Sobol, I'm generally aware of them.

Q. Do you review advertising copy before it's released for publication?

A. I do not. That is not a -- an accountability of our function of the marketing

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operations group, sir.
Q. And it's a function of being primary -- primarily responsible for the placement of advertising.
Does the marketing operations group have copies of the -- the advertisement?
A. Not as a routine matter, sir.
Q. So, is it fair to say, then, that the marketing operations provides for the placement of certain advertisements without necessarily knowing what the content of that advertisement is?
A. No, sir, I don't think it would be fair to say that.
Q. Do they know the specific content of the ad? They may know it's a Camel filters ad, but do they know what -- what it's going to look like necessarily?
MR. OPSITNICK: Objection to the question as compound.
THE WITNESS: Could you restate the question, please, sir?
BY MR. SOBOL:
Q. Sure.
Does the marketing operations group have copies of the advertisements which they are

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going to place, such that they know the specific content of the advertisement that they're going to place?
A. No, sir, we would not do that routinely.
Q. Is it fair to say, then, for example, that marketing operations could provide for the placement of a Camel ad on a billboard, but not know specifically what the content of that Camel advertisement would be?
A. That could be the case, Mr. Sobol.
Q. Is that usually the case in your experience?
A. If, by your question, Mr. Sobol, you mean do -- does Ms. Ittermann in -- in her group have a general understanding of the type and -- and nature of the advertising that is going to be placed, she -- she would probably have that understanding. The specific ad, however, she may not have detailed knowledge of --
Q. And --
A. -- would -- that would typically be an accountability of the brand business unit and its advertising agency that would furnish materials, production materials to publications or

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to printers for outdoor advertising.
Q. Is Ms. Ittermann supplied with copies of marketing plans, to your knowledge?
A. I do not know that for a fact, sir.
Q. I want to go back in time a little bit. You said that you were involved in competitive analysis in or around 1973, 1975 in -- as your role as a marketing assistant.
Do you recall that?
A. I believe -- I believe I mentioned that that was probably one of the accountabilities that I -- that I had at that point.
Q. Do you recall during that time period, focus on that time period first, do you recall during that time period analyses performed by RJR which correlated smoke pH with sales volume?
A. No, sir.
Q. Not aware of any of that information?
A. No, sir.
Q. Are you aware that historically Philip Morris gained a significant market share through the sale of Marlboro during the mid-1960s?
A. I have a general recollection of -- of that, sir.
Q. It's actually a pretty significant

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historical fact in the cigarette business, isn't it?
A. It may be, sir.
Q. Have you ever discussed with anyone at RJR possible reasons for that historical fact, that RJ -- that Philip Morris gained significant market share through the sale of Marlboro during the 1960s?
MR. OPSITNICK: Objection, assumes facts not in evidence.
THE WITNESS: Would you repeat the question, please, sir?
BY MR. SOBOL:
Q. Have you ever had any conversations with anyone at RJR concerning the historical fact that Marlboro gained significant market share during the mid-1960s?
A. Mr. Sobol, I -- I may have been in such discussions that, if -- if I was, it was quite some time ago and I don't recall.
Q. You don't recall any of those discussions?
A. No, sir, not -- not in any detail or -- or even -- even recall such discussions.
Q. Do you have any belief as to the

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reasons why Marlboro gained significant market share during the mid-1960s?

A. I have a general and personal belief, sir.

Q. And what is that belief?

A. That belief is -- is founded on a few; that their advertising message was relevant at the time to -- to society and the consistency with which they delivered that message was largely responsible for their success in the marketplace.

Q. Do you believe that the Marlboro advertising campaign is still a relevant message for the current times?

A. Well, my own personal belief is that -- that it continues to be, and my basis for that is their continuing success in the marketplace.

Q. Let's mark this Exhibit 3.

(PLAINTIFFS' EXHIBIT NUMBER 3 WAS MARKED FOR IDENTIFICATION)

BY MR. SOBOL:

Q. Exhibit 3, Mr. Blackmer, is an RJR secret document entitled "Implications and Activities Arising From Correlation of Smoke pH With Nicotine Impact, Other Smoke Qualities and

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Cigarette Sales."

MR. OPSITNICK: Objection to the characterization of it as a "secret document."

MR. SOBOL: Well, I'm just reading the title page.

MR. OPSITNICK: I'll agree that there's a stamp on it marked "secret."

BY MR. SOBOL:

Q. This is a -- a lengthy document, sir, and I just want to ask if you've seen it before.

A. I don't recall seeing it from the title of it, sir.

Q. Why don't you take a minute just to look through it.

Now that you've had a chance to review the document, sir, do you recall seeing it previous to today?

A. I have no recall seeing this document, sir.

Q. And when you were engaged in competitive analysis as a marketing assistant, did you investigate Marlboro cigarettes?

A. I did not, sir.

Q. Did you investigate Kool cigarettes?

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A. I did not.

Q. And you're unaware of any efforts taken at RJR to correlate sales data with pH of the smoke; is that correct?

A. I have no previous awareness of that.

Q. Thank you.

One of the objectives, I believe, that you mentioned yesterday of the database management group within marketing operations was for --

A. Database marketing group, sir.

Q. Database marketing --

A. Database marketing group.

Q. What did I say?

A. Database management.

Q. All right. Database marketing group, they're responsible for Camel Cash; is that right?

A. I believe your -- your question yesterday was who -- who has primary responsibility or who is -- I'm sorry. I can't recall specifically.

Q. Well, let me just ask you.

What is it?

A. They're involved in -- in Camel Cash, sir, as -- as some of my other groups are to the

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extent that a Camel Cash program involves the mailing of any elements -- the direct mailing of any elements of the program to -- to adult smokers. They would be involved in that, yes, sir.

Q. Okay. What is Camel Cash?

A. Camel Cash today is -- is a program that I -- as I understand it is -- is designed to accomplish two things. I believe we may have talked about this yesterday. First to reward Camel smokers for their loyalty to the brand by offering the opportunity to redeem proofs of purchase for premium items or cigarette-related merchandise.

In addition, I believe, it has, as its objective, to increase share of purchases by smokers who may be purchasing Camel brand styles part of the time, but also devoting a portion to their purchases to a competitive brand with the intent of increasing our share of those purchases, and there may be other objectives. That's my general understanding of the programs.

Q. How does the program work?

A. Basically, the program works with smokers receiving a proof-of-purchase certificate -- in this case, I believe it's called Camel Cash -- along with -- packed with their

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purchase of a -- of a package of Camel cigarettes. They have the opportunity to save those proofs of purchase and redeem them against -- redeem them for premiums or cigarette-related merchandise, some of which may carry a brand logo, some of which may not, and -- and they are sent back the item that -- that they have ordered.

Q. And the Camel Cash program is in operation today?

A. It is, sir.

Q. And in its current form, how long has it been in operation?

A. Could -- could you clarify what you mean by "in its current form"?

Q. How long has Camel Cash been around?

A. To the best of my recall, 1991, sir, since 1991.

Q. Have there been any significant changes to the Camel Cash program since 1991 of which you're aware?

A. Could you help me with the word "significant," please, sir?

Q. Well, any -- any strike you as significant, as you would use that word?

A. The key thing that comes to mind --

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top of mind in the -- it would be in the -- in the most recent version, most recent catalog. I believe smokers have the opportunity to order the cigarette-related merchandise, the merchandise in the catalog, by using real money as opposed to simply the Camel Cash proofs of purchase that -- that have been -- that have been the, I believe, the exclusive means of -- of ordering that in prior catalogs.

Q. Are you familiar with the current Camel Cash catalog?

A. I have some broad familiarity with it, sir.

Q. Have you seen it?

A. I have.

Q. Take a look at Exhibit Number 4, once the court reporter has had a chance to mark it, and ask you if this is the current Camel Cash catalog.

(PLAINTIFFS' EXHIBIT NUMBER 4 WAS MARKED FOR IDENTIFICATION)

BY MR. SOBOL:

Q. You've reviewed Exhibit 4?

A. I've -- I've reviewed Exhibit 4. There are elements here that appear to be consistent with the catalog, understanding that

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this is a photo -- black and white photocopy of what I think is a -- is a four-color piece. There appear to be some -- be at least one element missing from --

Q. And what element was that, sir?

A. I believe, sir, that that would be the -- the order form by which a smoker would -- would indicate his -- his or her order quantities and -- and so forth. I don't -- I don't see that here and -- and that's an important piece of the -- of the Camel Cash program.

Q. Now, the four-color catalog, is that available to smokers in Massachusetts?

A. I believe that is, sir.

Q. And the four-color catalog, is that available to smokers in California?

A. I believe that it is, sir.

Q. How is it that a smoker, say, from California would get a copy of the catalog or four-color print of the catalog, is more accurately stated?

A. There are at least three ways that -- that a -- that a smoker could -- could receive a copy of the catalog, Mr. Sobol.

Q. Would you please state the three

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different ways that a smoker from California would get the catalog?

A. There -- there may be additional --

Q. The three of which you're aware.

A. Three of which I'm aware.

The first of which would be the direct mailing of a Camel Cash catalog to a smoker on our active mailing list; second of which would be in retail stores; the third would be by calling an 800 number and after indicating that that individual is a smoker, has provided his or her birth date, the catalog could be mailed to that individual in response to that request.

Q. Does RJR distribute copies of the Camel Cash catalog to retailers in California?

A. I believe that to be the case, sir.

Q. And does RJR distribute copies of the Camel Cash catalog to retailers in Massachusetts?

A. I believe that to be the case.

Q. And does RJR distribute copies of the Camel Cash catalog to distributors in the State of California?

A. I don't believe that to be the case, sir, but I could be mistaken.

Q. Would your answer be the same for

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Massachusetts?
A. Yes, sir.
Q. In those instances where RJR distributes the Camel Cash catalog to retailers in California, what efforts does RJR take to instruct the retailers not to distribute the catalog to minors?
A. I don't know a specific answer to that question, Mr. Sobol. I do know that -- that any display containers with which these catalogs are shipped have an indication on there that they're -- that the offer is for smokers 21 plus.
Q. Do you have any knowledge as to whether or not there are -- RJR distributes specific directions to retailers to insure against the Camel Cash catalog getting in the hands of minors?
A. I -- I do not have such knowledge, sir.
Q. And just so the record is clear, it's your understanding that this is the current Camel Cash catalog with the exception that the order form seems to be missing and that it's a photocopy?
A. There may be other elements missing, Mr. Sobol, I did note -- notice, however, that the

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order form was missing. And, as I indicated, that's an important element of the catalog. The order form contains a, I believe, very clear copy that this offer is for smokers 21 plus. In fact, the -- the consumer on the order form, I believe, must certify that they are a smoker above the age of 21 and provide their birth date as well.
Q. Does RJR distribute to the retailers in California the -- some sort of display case or display rack to accompany the Camel Cash catalog?
A. Yes, sir, I believe that to be the case.
Q. Can you describe the manner in which the catalog is to be displayed?
A. No, sir, I'm unable to give you specifics on that.
Q. Do you know whether or not RJR distributes instructions on how to set up the display?
A. I don't know that, sir.
Q. And this Camel Cash catalog is distributed by RJR to retailers in Massachusetts; is that correct?
A. I, as I indicated earlier, sir, I believe that to be the case. I'm -- I'm not sure.

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Q. You're not sure?
A. I'm not. This is a national program, Mr. Sobol. That's -- that's all I can tell you.
Q. And is it your understanding that under the Camel Cash program smokers can redeem their Camel Cash coupons for Joe Camel memorabilia?
A. I believe that to be the case, sir.
Q. And that would be true in the State of California?
A. I believe that to be the case.
Q. That would be true in the Commonwealth of Massachusetts?
A. I believe so, sir.
MR. SOBOL: I'm at a good point for our first break in the morning.
Is that okay?
MR. OPSITNICK: Fine. We're at about an hour. That's great.
MR. SOBOL: Thank you.
THE VIDEOGRAPHER: Off record at 10:28.
(Recess 10:28 a.m. to 10:45 a.m.)
THE VIDEOGRAPHER: We're back on record at 10:45.
BY MR. SOBOL:

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Q. Mr. Blackmer, I'm wondering if you can give me your understanding of what brand loyalty means.
A. Yes, sir, I can give you a general understanding.
Q. Go ahead.
A. Brand loyalty in -- in the sense that I've referred to it here today and -- and yesterday in -- in my mind is -- I'm trying to think of a word, a paraphrase, loyalty is the degree to which a smoker has -- demonstrates purchase behavior that would indicate his degree of loyalty to the brand. I'm sorry. I can't -- I can't come up with an alternative word for you, Mr. Sobol.
Q. Would that behavior which you -- purchase behavior which you refer to constitute repeated purchases of the same brand?
A. Yes, sir, that would -- that would be one measure of that.
Q. And do you have an understanding as to whether or not the age at which a person begins to smoke affects brand loyalty?
A. No, sir, I do not.
Q. Do you have an understanding that a young adult smoker is more likely to continue

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smoking than someone who starts above the age of a young adult smoker?

A. No, sir, I do not.

Q. Does RJR target the young adult smoker for brand loyalty?

A. If by that you mean smokers 21 plus, I think that would -- that would apply across the board to -- to any smoker, sir.

Q. In other words, RJR attempts to instill brand loyalty in smokers 21 and above?

A. I believe that would be the case, sir.

Q. And is it your understanding that RJR has a policy not to market to persons between 18 and 21 years of age?

A. That is my understanding, sir.

Q. Is the Camel Cash program targeted to any specific demographic group which you're aware?

A. Not that I'm aware of, sir.

Q. Not any particular age group?

A. Not that I'm aware of, sir.

Q. Any particular gender?

A. Not that I'm aware of.

Q. Do you have an understanding of whether or not the marketing strategies for the RJR

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brands are -- are targeted towards specific demographic groups currently?

A. That would be my expectation, Mr. Sobol.

Q. And you're unaware of the specific demographic groups which are targeted; is that correct?

A. That's correct, sir.

Q. Do you know if RJR has conducted studies on brand loyalty?

A. Mr. Sobol, if by that you mean has RJR conducted studies which might measure, for example, smokers' propensity or -- or purchase pattern behavior with respect to claiming one brand as their usual brand, another brand as a second choice brand, and requesting information from the smoker on relative purchases between those -- those two brands, I believe that would be the case, sir.

Q. Do you know whether or not RJR has conducted studies regarding brand loyalty to determine whether or not brand loyalty was affected by the age at which people begin smoking?

A. I recall no such studies, sir.

Q. And do you know whether or not anyone has conducted such a study for RJR?

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A. I -- I recall no such studies, sir.

Q. And -- strike that.

Do you know whether or not RJR has collected data regarding when people start smoking? Let me rephrase the question.

Do you know whether or not RJR has collected data regarding at what age people start smoking?

A. I do not know, sir.

Q. Do you know whether or not data has been collected at RJR regarding at what age people start smoking, which is then used in determining the content of any particular advertising campaign?

A. I recall no such studies, sir.

Q. Do you know for a fact whether or not RJR has collected data regarding at what age people start smoking?

A. No, sir, I do not.

Q. You, therefore, do not know whether or not such data is used in connection with the development of advertising campaigns, do you?

A. Would you repeat the question, please, sir?

Q. You do not know whether such data regarding the age at which people start smoking has

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been incorporated into the content of RJR's advertising campaigns, do you?

MR. OPSITNICK: Objection, assumes facts not in evidence.

THE WITNESS: I'm going to have to you ask you to repeat the question again, please, sir.

BY MR. SOBOL:

Q. You do not know whether or not data regarding the age at which people start smoking has influenced the content of RJR's advertising, do you?

A. I do not, sir.

Q. Are you aware of any complaints that RJR has received concerning noncompliance with the cigarette advertising code which have originated from the State of California?

A. No, sir, I'm not.

Q. And as part of the function of marketing operations which places advertisements nationally and within California and Massachusetts, would that -- would that group be apprised of whether or not its placements had violated a cigarette advertising code?

A. I would expect that to be the case,

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sir.

Q. And are you aware of any complaints originating from Massachusetts that RJR has received concerning noncompliance with the cigarette advertising code?

A. Not that I can recall, sir.

Q. Can you tell me -- identify for me the studies RJR has conducted to determine the effectiveness of its efforts to decrease the sale of minors -- of cigarettes to minors in Massachusetts?

A. No, sir, I cannot.

Q. Can you identify for me studies which RJR has conducted to determine the effectiveness of its efforts to decrease the sale of cigarettes to minors in California?

A. No, sir, I cannot.

MR. OPSITNICK: Objection to both those questions. Assumes facts in evidence. It assumes that RJR has conducted such studies.

BY MR. SOBOL:

Q. Do you know whether or not RJR has conducted such studies either for the Commonwealth of Massachusetts or the State of California?

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A. I do not know, sir.

Q. Do you know whether or not RJR has undertaken any efforts to reduce the consumption of cigarettes by adults in the State of California during the 1990s?

A. I do not know, sir.

Q. And would the same be true for Massachusetts?

A. The same would be true. I do not know.

Q. And your definition of adult in that circumstance would be those above the age of 21; is that correct?

A. In -- in what context, Mister -- Mr. Sobol?

Q. Are you aware of any efforts made by RJR to reduce the consumption of cigarettes in Massachusetts by residents over the age of 21?

A. No, sir, I'm not aware.

Q. And you are also not aware of any such efforts conducted within the State of California; is that correct?

A. In the context -- in the same context as your previous question, if that's what you meant by that question, I am not aware, sir.

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Q. What is RJR's annual expenditure for efforts taken nationally to prevent the sale of cigarettes to minors?

A. I do not know, sir.

Q. Do you know the expenditures which RJR takes to prevent the sale of cigarettes to minors in California?

A. No, I do not, sir.

Q. In Massachusetts?

A. I do not, sir.

Q. Do you know what the annual expenditure is by RJR for educating the public about the health risks associated with smoking?

MR. OPSITNICK: Objection, assumes that RJR has undertaken to do such education.

BY MR. SOBOL:

Q. Let me ask you a foundation question, Mr. Blackmer.

Do you know whether or not RJR has taken any efforts to inform the public about the health risks associated with smoking?

A. Yes, we have, sir. I mean, the -- the Surgeon General's warning is placed on every pack of cigarettes that we produce in the United

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States for sale in the United States.

Q. You have to do that by law, right?

A. That's correct, sir. And our advertising contains the -- the same forewarnings.

Q. Other than those steps which RJR takes, which are required by law, to your understanding, what efforts has RJR made during the 1990s to inform the public about the health risks of smoking?

A. I do not know, sir.

Q. Can you give me your definition, sir, of what outdoor advertising encompasses?

A. Yes, sir.

Q. Please, go ahead.

A. Typically, outdoor advertising includes such media forms commonly described in -- in -- in the outdoor advertising industry as -- excuse me -- as billboards, bulletins, reference may maybe perhaps to 30-sheet posters, 8-sheet posters, transit advertising, which may be stationary or movable in the stationary arena, in the stationary transit advertising. It might be bus shelters. A movable transit area, it might be bus posters, taxi tops. That would include, I think, most of -- of what is commonly defined as

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outdoor advertising, Mr. Sobol. There may be others that I can't recall right off the top of my head.

Q. And during the 1990s, has RJR engaged in all those forms of outdoor advertising in Massachusetts?

A. I can't answer that specifically. I don't know a specific answer to that.

Q. Who would know that answer?

A. I'm not sure we have anybody that could answer that without historical review.

Q. Who is the person primarily responsible for the placement of outdoor advertising within your group?

A. Ms. Ittermann.

Q. Does RJR have a branch office in Massachusetts?

A. Could you be more specific, sir?

Q. Does RJR employ anybody within Massachusetts to assist it in its placement of advertising?

A. No, sir, RJR does not.

Q. Does RJR have an independent contractor to assist it with its placement of advertising in Massachusetts?

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A. I believe that it does, sir.

Q. And do you know the name of that independent contractor in Massachusetts?

A. The independent contractor is not located in Massachusetts, Mr. Sobol.

Q. What is the -- who is the independent contractor responsible for the placement of advertisement in Massachusetts?

A. Long, Haymes, Carr.

Q. Long, Haymes and Carr arranges for the placement of RJR Tobacco advertising on, say, billboards in Massachusetts?

A. Yes, sir.

Q. Any other independent contractors have that responsibility for Massachusetts for which you're aware?

A. Not that I'm aware of, sir.

Q. Can you explain to me what efforts, if any, were taken to educate or inform Long, Haymes and Carr of the cigarette advertising code restrictions on the placement of outdoor advertisement?

A. Well, sir, to begin with, I believe it is part of our formal agreement with Long, Haymes and Carr that those provisions are included

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in there. There is a clear expectation by virtue of that agreement, along with ongoing discussions with the agency about those provisions of the code.

Further, each of the so-called contracts for outdoor advertising space that Long, Haymes and Carr issues to individual media suppliers that supplies nationally contains the key provision in the cigarette advertising code concerning no placement of outdoor advertising within 500 feet of a school or playground; or if there are more stringent local provisions in place, that specific local provision is also contained as -- as part of the contract with the media supplier in that -- in that particular locality.

There may be others, Mr. Sobol. Those are what I can recall off the top of my head.

Q. Does RJR have a direct contractual relationship with these media suppliers to your understanding?

A. Mr. Sobol, I'm not a lawyer. Our -- our contract is with Long, Haymes and Carr who, I believe -- and, again, I'm not -- I don't have a full understanding of the legal terms involved here, but I -- I believe there is a -- a reference to Long, Haymes and Carr acting as our agent in --

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in that regard. Whether that constitutes a -- a direct relationship with the suppliers in Massachusetts, I'm -- I'm unable to tell you --

Q. Does your department --

A. -- someone with more legal experience than obviously I have to -- to respond to that.

Q. Let me ask you something which would be in your, perhaps, your personal knowledge; and that is, whether or not the marketing operations group communicates directly with media suppliers?

A. If by that you mean outdoor suppliers, that would rarely be the case, I would think so.

Q. It's not the usual course of business?

A. No, sir.

Q. Do you know who the media supplier is for the Commonwealth of Massachusetts that assists in placing your outdoor advertising?

A. I do not. My expectation, Mr. Sobol, would be that there would be several.

Q. In part of your response previously, you referred to ongoing discussions between RJR and Long, Haymes and Carr regarding the cigarette advertising code.

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Do you recall that bit of your testimony?

A. I believe what I meant to -- to convey there, that there -- there are ongoing discussions on a lot of topics, Mr. Sobol. Any that would include any -- any reinforcement of -- of the code provisions, I think it is fair to say that -- that Long, Haymes and Carr and their people have been working with us long enough that -- that we don't find it necessary to do reinforcement with a high degree of frequency.

Q. Other than what may or may not be discussed in the course of ongoing discussions about several topics, do you know whether or not RJR has engaged in any specific formal effort to educate Long, Haymes and Carr regarding the requirements contained in the cigarette advertising code?

A. I do not, sir, in the context in which you -- in which you asked that -- that question in its -- the formal portion of your question is -- is -- is where -- where I would have to say, I do not know.

I do know that -- that, and -- and feel confident, that -- that there is informal

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communication, if there is any sign or hesitation or misunderstanding on -- on those issues, that they're clarified quickly. That is an expectation that I have of -- of Ms. Ittermann.

Q. Are you aware of the total advertising budget for RJR cigarettes?

A. No, sir, not specifically.

Q. Do you know what portion of RJR's advertising budget is allocated to outdoor advertising?

A. No, sir.

Q. Do you know the total annual expenditures in Massachusetts for activities relating to outdoor advertising?

A. No, sir, we, as a company, wouldn't -- wouldn't typically track that expenditure.

Q. RJR has no way to determine the amount of money it spends on outdoor advertising in Massachusetts?

A. Not on a precise basis, no, sir.

Q. If you called up Long, Haymes and Carr, do you think you'd be able to get that information from them?

A. I think it would be difficult for

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them to provide that information.

Q. Why is that?

A. Typically, in -- in outdoor advertising, one has a tendency to buy markets rather than states. As an example, I believe this to be the case, that if one buys outdoor advertising in the Boston market, that may well include Providence, Rhode Island, as a -- as a scope of the -- of the market.

Q. Does --

A. For that reason, it -- it would -- it would be difficult to -- to -- to assess spending at the state level, sir.

Q. In connection with the placement of advertisements, outdoor advertisements across the country, does RJR segment the market on geographical levels, different regions of the country?

A. You may find that to be the case on -- on individual brand-by-brand basis, sir.

Q. Is that the case on a brand-by-brand basis?

A. I don't -- I can't answer that question specifically. I'm not sure.

Q. Who would be able to answer that

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question?

A. I think probably the best source of -- of that information would be the individual heads of the brand business units.

Q. They would have information on the annual expenditures for different forms of advertising within the regions for their brands?

A. No, sir. If I communicated that earlier, I -- I miscommunicated that.

Q. Okay. Who would, if anyone, have information regarding the annual expenditures for the different forms of advertising within the regions divided among the brands?

MR. OPSITNICK: Objection, assumes that the advertising is -- of expenditures are broken up into regions.

MR. SOBOL: Okay.

THE WITNESS: I'm sorry, Mr. Sobol, I believe your -- your earlier question, and I'm going to have to paraphrase, but asked about do -- does RJR do individual brands, break up the country into geographical segments.

And my response to that, I believe, was, I think that you would find that some

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individual brands do that. I did not mean to imply in my response to that question that we would typically track either -- either target specific advertising expenditures or track specific advertising expenditures by those geographic regions.

BY MR. SOBOL:

Q. Do you know whether or not RJR does track those expenditures by geographic regions?

A. I don't believe that we do, sir.

Q. And what's the basis for your belief.

A. The basis for my belief, Mr. Sobol, is my understanding of the way the process works today in terms of -- of media plan development, where a brand may, in their -- in their marketing plan, indicate that they want coverage of certain geographic regions by reasons of brand development or potential for a brand, a plan will be developed. But checking back, if you will, to see exactly what expenditures were levied in that -- were -- were apportioned or whatever to that specific geographic region wouldn't necessarily be an activity that RJR's marketing people would be -- would be engaged in.

And for that reason, if there is no

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need for us or for business purposes to track specific expenditures, we do not undertake to do that. It's a -- it would be a inefficient use of our resources.

Q. Do you know whether or not state or local governments require RJR to report the amount of advertising dollars spent within the state for any given year?

A. I'm unaware that those -- that those requirements exist anywhere in -- in total.

Q. What do you mean by "anywhere in total"?

A. Certain states, Mr. Sobol, I believe, have requirements where we have to pay sales and use tax on certain materials that are shipped into states. All right. I believe it to be the case that both California and Massachusetts have such requirements.

Those figures, however, are only going to represent a portion of our expenditure devoted to that specific state.

If I may, for example, to clarify that, the printed materials that are used in outdoor advertising in a specific state are, I believe, subject to that sales and use tax. That

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expense is only going to be a portion of and will not include the advertising space costs of one's total outdoor expenditures in any given state.

Again, the -- the purpose for our -- RJR's tracking that information is because there's a -- a tax obligation that we have and that we pay. That's the business purpose for that tracking. And, to my knowledge, that's the only use of that information.

Q. And RJR has information regarding the volume of cigarettes it sells within, for instance, the State of California; is that correct?

A. RJR has information on its sales to distributors located in any given state across -- across the country.

Q. Does RJR have any way to correlate the sales to distributors with the amount of advertising dollars spent within that distributor's region?

A. I think it would be very difficult to -- to do that. Some of these distributors today, Mr. Sobol, cover very broad geographic areas. Others might -- might deal with only a small geographic area, and I don't know how we would do -- undertake to do that.

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Q. Are you aware of the basis for the decisions regarding the placement and location and the amount of advertising -- outdoor advertising used in Massachusetts by RJR?

A. I'm sorry. Could you please repeat the question?

Q. Are you aware of the basis for the decisions regarding the placement, location and the volume of outdoor advertising in Massachusetts?

A. Mr. Sobol, it would be fair to say that I'm -- I'm aware of the -- the general process that we would use to do that, but specifically to Massachusetts, I -- I cannot give you that.

Q. Other than what you may or may not do to comply with the cigarette advertising code, can you describe that process for me?

MR. OPSITNICK: Objection, argumentative to the extent it suggests that Reynolds does not comply with the advertising code.

THE WITNESS: Could you restate the question, please?

BY MR. SOBOL:

Q. Sure.

Other than what RJR may or may not do

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regarding its compliance with the cigarette advertising code, can you explain to me the process by which decisions are made regarding the placement, location, and the volume of outdoor advertising in the United States?

A. In very general terms, Mr. Sobol. Brands marketing plan may include strategies which involve building rapid awareness among adult smokers, may involve achieving major metro coverage of its advertising or certain geographic areas with -- within the country. Any of those strategies might lead one to the development of a marketing -- of a media plan that included the use of outdoor advertising.

In -- and -- and -- and as a consequence of -- of that, a market list would be developed for such advertising and an agreement reached with a brand business unit as to the nature of the -- of the coverage desired.

Long, Haymes and Carr's involvement is -- is, by the way, throughout this -- this process in conjunction with our -- our media group. And, then, on a, essentially, a -- a market-by-market basis, the, what we call, the tactical media plan would be developed based on any

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of those -- I believe I -- I listed three -- marketing plan strategies that may lead to that.

A -- a tactical media plan would -- would be developed and Long, Haymes and Carr would set about working with the local media suppliers to deliver that coverage.

The cost of -- of that effort would -- would be a function of what it would take to achieve that desired coverage. If the cost was -- was, as one rolled up that -- that cost, was out of line with the budget, then one would begin a trade-off process to bring the -- the plan and the budget in line.

Typically, we do not start with, I want to spend X number of dollars in any given market or -- or state. It tends to be a -- a function of the way the plan falls till such time as -- as trade-offs between budget and plan objectives are -- are necessary.

That would be a -- a summary of the process, Mr. Sobol. It's -- it's perhaps a -- a little complex, but -- and -- and there are a lot of -- a lot of discussions there involved in -- in -- in going through that. There may be other elements that -- that I just can't recall right

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now.

Q. Is there a difference between a media plan and a tactical media plan?

A. Typically, Mr. Sobol, in my view, what you find is the tactical media plan is -- is a part of the overall media plan.

Q. How is a tactical media plan different than a media plan?

A. Typically, what you will -- will find in -- and, again, reinforce my earlier response, a tactical media plan is -- is part of a broader whole media plan. But one might find in a tactical media plan a magazine list with planned number of insertions in that magazine. One might find the specific outdoor forms that would be used in any given market.

Q. Are the media plans which contain the tactical media plans generated by your group in collaboration with the brand business units?

A. Could you repeat the question, please?

Q. Who develops the media plans?

A. The media plans in their totality are -- are -- are jointly developed by the media group within marketing operations in Long, Haymes

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and Carr. Long, Haymes and Carr does most of the physical work on that. They are typically then reviewed with members of the brand business units.

Q. And does the media group within marketing operations use as its guide in developing a media plan some sort of document developed by the brand business units which concerns the overall marketing strategy?

A. Typically that would be the case, Mr. Sobol.

Q. What -- what -- what kind of document is that? What's it called ordinarily?

A. Generally, it's called the -- the annual marketing plan for any -- any given brand.

Q. And the annual marketing plan, just so the record is clear, is developed by the brand business units?

A. That would be the primary individuals responsible for its development.

Q. The media plan which is developed by your media group with Long, Haymes and Carr, would that contain a plan for outdoor advertising as well as magazine advertising and all other forms of advertising ordinarily?

A. Yes, it certainly -- to the extent at

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any rate that it would fall within the -- the definitions that -- that y'all have provided with respect to outdoor advertising and magazine advertising, that -- that would be my expectation, Mr. Sobol. There may be instances where that isn't the case. I'm -- I'm unaware of those.

Q. You don't review the annual marketing plans developed by the business brand units, do you?

A. I do not, sir.

Q. And you also don't review the media plans produced by your media group in collaboration with Long, Haymes and Carr?

A. I do not.

Q. And you don't review the tactical media plans contained within the media plans developed by your media group in collaboration with Long, Haymes and Carr?

A. I do not.

Q. And, therefore, you don't have an understanding as to the specific strategies for outdoor advertising on a brand-by-brand basis?

A. That's correct, sir.

Q. And the same would be true for magazine advertising?

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A. Yes, sir, that would be true.

Q. And, therefore, you're not aware of the decisions regarding the content of the form of outdoor advertising, are you?

MR. OPSITNICK: Object to the question as ambiguous.

THE WITNESS: Would you restate the question, please?

BY MR. SOBOL:

Q. Are you aware of the specific content and the decisions which go into specifying that content for outdoor advertising in Massachusetts?

A. No, sir, I'm not.

Q. And in California?

A. No, sir.

Q. Does your group engage in any efforts to evaluate the effectiveness of outdoor advertising?

A. Could you be more specific with respect to the effectiveness word, sir?

Q. Are you aware of any studies done at RJR regarding whether or not the placement of outdoor advertising within specific area has increased the sales volume of cigarettes?

A. I'm aware of no such study,

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Mr. Sobol.

Q. Do you know whether or not -- well, strike that.

Is there a division or department within RJR that may conduct such kind of studies?

A. If any such studies exist, I would expect they would -- they would be found within the area that Mr. Douglas Weber manages.

Q.

THE VIDEOGRAPHER: Excuse me, Counsel. We have three minutes on the videotape.

MR. SOBOL: Okay.

BY MR. SOBOL:

Q. Is Long, Haymes and Carr the independent contractor which RJR uses for the placement of outdoor advertising in the State of California?

A. I believe that to be the case.

Q. And would it be fair to say that the media suppliers in the State of California are different than the media suppliers most likely then in Massachusetts?

A. There may be a supplier in common between the two states, Mr. Sobol. There's been

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some consolidation within that industry over the past several years and -- and some of these suppliers may be in common. I -- I can't tell you which are and -- and which aren't.

Q. And is it fair to say that people within your media group are not regularly in communication with the California media suppliers?

A. Yes, it would be fair to say that.

Q. And does RJR engage in all the forms of outdoor advertising which you listed previously in the State of California?

A. I don't know, sir.

Q. Do you know whether or not RJR places billboard advertisement in the State of California?

A. If by billboards you mean bulletins and 30 sheets, some of those terms that are more specific to individual media forms, in -- as used in that industry, yes, I'm reasonably confident that we do.

Q. Reasonably confident that RJR places outdoor advertisement in the form of billboard bulletins, 30-sheet posters, 8-sheet posters, and transit advertisement in the State of California?

A. I don't know that it includes all those forms that you just listed, Mr. Sobol.

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Q. But you're reasonably certain some form of outdoor advertising?

A. Yes, I am.

Q. And those would be conducted through RJR's agent, Long, Haymes and Carr?

MR. OPSITNICK: Objection to the use of the word --

BY MR. SOBOL:

Q. I'm sorry. RJR's independent contractor of Long, Haymes and Carr?

A. They -- they would be the ones contracting for the -- the placement of that, yes, sir.

THE VIDEOGRAPHER: Excuse me, Counselor. I need to change the tape.

MR. SOBOL: Okay.

THE VIDEOGRAPHER: This concludes tape number four of the Edward Blackmer deposition. The time is 11:46.

(Recess 11:46 a.m. to 11:58 a.m.)

THE VIDEOGRAPHER: This is tape number five of the Edward Blackmer deposition. The time is 11:58.

BY MR. SOBOL:

Q. Mr. Blackmer, do you know what the

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annual expenditures are at RJR for outdoor advertising across the United States?

A. No, sir, I do not.

Q. And the same is true for California?

A. That would be true, yes, sir.

Q. And for Massachusetts, as well?

A. Yes, sir.

Q. What is the total annual expenditure concerning magazine or periodical advertising by RJR in the United States?

A. I do not know, sir.

Q. And what's the annual expenditure for magazine advertising in California taken by RJR?

A. I do not know, sir.

Q. And in Massachusetts?

A. I don't know, sir.

Q. Do you know historically speaking what the annual expenditures have been for outdoor advertising in the United States by RJR?

A. I do not.

Q. And do you know historically speaking what the annual expenditures for magazine advertising has been by RJR?

A. I do not.

Q. Who at RJR makes decisions regarding

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the content of magazine advertising?

A. Generally, that decision would -- would -- would come out of the brand business units.

Q. And does the brand business unit work with an advertising agency?

A. Typically they do, sir.

Q. And do you know which advertising agency they work with?

A. Typically, there are different agencies for different brands.

Q. Do you know what the different agencies for the different brands are?

A. I believe I do, sir.

Q. What are they?

A. For Camel, I believe the -- the agency is Mezzina Brown in New York. For Doral, I believe the advertising agency is Coyne Beahm in Greensboro, North Carolina, C-O-Y-N-E B-E-A-H-M. And for Winston, I believe their advertising agency is Long, Haymes Carr here in Winston-Salem.

Q. What about Salem?

A. I do not know. Salem is not a nationally advertised or -- or marketed brand. At this point in time I do not know who their

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advertising agency is.

Q. Is Salem advertised on any restricted geographical basis?

A. If -- if by that you mean, for example, is it in -- is it doing some activity in test markets, the answer to that is -- is "yes."

Q. Is it the advertising regarding Salem just in test markets at the current time?

A. I believe that to be the case, Mr. Sobol.

Q. Where are the test markets?

A. At the present time, I believe the only test market, the best of my knowledge, is New York, metropolitan area of New York, not the State of New York, I believe is the case.

Q. The advertisement -- the advertising agencies for these brands assist with magazine advertising as well as outdoor advertising?

A. If by that you mean the development of that advertising, that would be the case, sir.

Q. Did RJR hire an advertising agency to assist in developing the Camel Cash catalog?

A. I believe that to be the case, sir.

Q. And was that Zena Brown?

A. Mezzina Brown, M-E-Z-Z-I-N-A, Brown.

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Q. Do you know in what magazines RJR currently advertises Camel cigarettes?

A. I do not, sir.

Q. Who would know that at RJR?

A. Ms. Ittermann and her group.

Q. Do you know whether or not RJR advertises in magazines which are distributed not on a nationwide basis, but in a more limited geographical area?

A. Could you repeat the question, please, sir?

Q. I want to know if RJR places advertisements in magazines that are distributed on a less than national basis?

A. I believe they do, sir.

Q. And do you know whether or not these magazines are distributed in California?

A. I believe some of them are, sir.

Q. And do you know which magazines they are?

A. I can give you a general idea of some of the magazines. I can give you some examples.

Q. Go ahead, tell me what -- all that you can recall.

A. Those that I recall -- I may not get

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the names exactly right, in -- in the San Francisco metro area, for example, might include SOMA, might include -- I'm not sure about this name -- San Francisco Bay Guardian or something similar to that. I believe there was a publication East Bay. I can't recall the rest of the -- the name of that -- that publication.

In the Los Angeles metro area, I think Reynolds is presently using I believe it's the LA New Times, Buzz. That's all I can recall off -- off the top of my head, Mr. Sobol.

Q. And is it Ms. Ittermann in the media group that would make decisions in collaboration with Long, Haymes and Carr regarding whether or not to place RJR advertisements in magazines that are distributed on less than a national basis?

A. It would be fair to say that, sir.

Q. Do you have an understanding, sir, of whether or not the content -- the specific content of RJR's magazine advertising is different than RJR's outdoor advertising?

A. No, sir, I do not.

Q. By way of clarification, does that mean your -- you do not know whether or not those two forms of advertising are different in specific

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content?

A. I believe in some cases you may find that to be different. I can't cite you specific examples right off the top of my head, but I think you may find that to be the case. It's -- it would typically be the exception rather than the rule that that was the case.

In -- in the broadest definition of -- of your question, outdoor advertising would more -- most often have a shorter message than a print advertising -- print piece, for example. You may utilize a -- a similar or might even be identical visual element of back and forth between outdoor print.

Q. Do you know whether or not for any single specific brand RJR targets a different demographic group for its outdoor advertising versus its magazine advertising?

A. I don't know specifically. I -- I guess I would be surprised if that was the case, Mr. Sobol.

Q. Is it the media group in collaboration with Long, Haymes and Carr that makes the decisions of which magazines to place advertisements?

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A. The media group in collaboration with Long, Haymes and Carr would certainly play the -- the primary role in developing that recommendation, Mr. Sobol.

Q. Do you know what information or data that the media group and/or Long, Haymes and Carr review in making the decision and where to place advertising in magazines, which magazines to place that advertising?

A. Would you repeat the question, please?

Q. Yes, I think I'd -- I'd like to.

Do you know what information or data that the media group in collaboration with Long, Haymes and Carr reviews in making its determination of which magazines to place advertisements of RJR cigarettes?

A. Not specifically. I mean, I -- there are a range of -- of information. I'm -- I'm sure that it's reviewed in -- in order to develop that recommendation.

Q. And that would include the information available through syndicated research such as Simmons and MRI and L&A?

A. I believe it would be the case that

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either Simmons and/or MRI studies would be used. I'm not sure whether L&A information is -- would be used. There may be other information that is used, Mr. Sobol.

For -- for example, if a publisher indicates that they're going to do -- just a contemporary example -- going to do a special issue on Seinfeld, for example, or the last episode of Seinfeld, an expectation would be created that that particular issue might deliver a number of -- of -- of adult readers above its -- its normal delivery.

In that case, an advertiser may choose to, based on the information provided by the publisher, for example, in this case, an advertiser may choose to be in that issue when he -- he or she otherwise may not choose to be.

There -- there may be other information on -- on -- on which we use to base those recommendations.

Q. So, of course, the people who sell magazine advertising space give you information about the readership or expected -- expected readership of the periodicals; is that correct?

A. I think most typically, to -- to use the example that we were -- we were just talking

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about, a publisher might -- might guarantee a certain circulation that there -- would be different from their -- I'm not sure about this, but might be different from their average weekly circulation in the case of a weekly publication, for example.

Q. Do you know whether or not your employees in the media group have information concerning the subscribership and readership of the magazines in which RJR places advertisements for its cigarettes?

A. In some cases I believe we do, Mr. Sobol.

Q. Some of that information is supplied by the magazine itself, correct?

A. I believe that to be the case.

Q. Are you aware of any magazines which have supplied information regarding the readership -- regarding its readership and the age of its readers?

A. I can recall -- excuse me -- one instance of that and I'm sure there -- there are many others.

Q. Are you aware of any information supplied by any magazine regarding the nature of

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its readership which did not provide information regarding the age of its readership?

A. Sorry, sir. I'm having trouble following that question.

Q. Are you aware of any information supplied by any magazines in which RJR places advertisements for its cigarettes that contains information regarding its readership, but does not contain any information regarding the age of its readership?

A. No, sir, I -- I would expect that that would be highly unusual.

Q. Isn't it always the case that when a magazine supplies RJR with information regarding its readership, it always has information regarding the age of the readership?

A. I cannot confirm or deny that, sir.

Q. Do you know what factors are taken into account by RJR in making decisions regarding which brands to place in which magazines?

A. Mr. Sobol, I'm -- I'm having a little difficulty with that question, because it --

Q. Didn't have the word "advertisement" in it. Let me try again.

A. Could you restate the question,

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please?

Q. Are you aware of what factors RJR takes into account in making the decision of which brands it advertises in which magazines?

A. Yes, sir. The question sounds very similar to one -- one you asked earlier. Simmons and -- and/or MRI data would be -- would be used as -- as a part of normal media plan development practice; and that is, to -- to gauge what in the business is called reaching and frequency numbers.

And, as I indicated earlier, there may be special circumstances which arise similar to the example that I -- that I cited earlier of a -- of a special edition -- a special edition of a particular magazine coming along.

Those would -- those would be primary factors obviously. All of that within -- within the context of the cigarette advertising and promotion code, as well as the process we discussed yesterday in terms of a magazine qualifying for use by -- by RJR.

Q. You aware of any instance where a magazine has refused to permit RJR to purchase advertising space in its publication?

A. Yes, sir, I am.

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Q. On -- has that happened on more than one occasion of which you're aware?

A. If by that you mean, Mr. Sobol, are there publications who do not solicit nor do they accept cigarette advertising, there are -- there are certainly those publications that exist.

Q. In addition to those publications, are you aware of any instance where a magazine which ordinarily accepts cigarette advertising has refused to run a specific RJR advertisement?

A. Not that I can recall off the top of my head, sir.

Q. Do you know whether or not RJR has undertaken any studies to determine the consumer reaction to its magazine advertising?

A. I'm generally aware that such studies have been done.

Q. And are they done by RJR or by some other party on RJR's behalf?

A. I -- typically, I think the -- the case would be, Mr. Sobol, that the actual fieldwork for that kind of a study would be -- would be done by a contractor to -- to RJR. In some cases, you might -- might find that -- that both the design and the analysis portions of that research might be

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done by -- by an independent contractor. I'm not current on the process as -- as it existed.

Q. Is that part of Mr. Weber's responsibilities?

A. To the extent that such research is -- is -- is done would be part of Mister -- Mr. Weber's research -- Mr. Weber's accountability.

Q. Are you aware, sir, of RJR's total annual expenditures for activities relating to the deployment of cigarette-related merchandise?

A. I am not, sir.

Q. Are you aware of those expenditures as they relate to the Commonwealth of Massachusetts?

A. I am not.

Q. And are you aware of those expenditures as they relate to the State of California?

A. I am not.

Q. And, historically, do you know what those expenditures have been in the United States, in California or in Massachusetts?

A. I do not, Mr. Sobol.

Q. Do you know what the reasons are for RJR sale or distribution of cigarette-related

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merchandise is?

A. Not specifically, Mr. Sobol.

Q. Generally, do you know what the reasons are for distributing cigarette-related merchandise?

A. Generally, the -- I believe it would be the case that cigarette-related merchandise would -- would be distributed to -- to smokers for a couple of reasons. The first of which goes back to maintaining franchise smoker loyalty to our brand, making them less vulnerable to switch, perhaps, to another cigarette brand. It would include an objective that we discussed earlier with respect to increasing an adult smoker's share of purchases of our brand if they're -- if they're also using -- you know -- smoking another brand on an occasional basis or perhaps even on a more frequent basis than our brand.

And in -- in some instances, the use of cigarette-related merchandise would be related to stimulating adult smoker trial of our brand in -- in an instance where a competitive smoker might be considering trying one of our products. Cigarette-related merchandise -- the use of cigarette-related merchandise might help that

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smoker making that decision to try one of RJR's brands. Those would be the primary reasons for use of cigarette-related merchandise. Mr. Sobol, there may be others.

Q. Does RJR engage in any form of marketing or advertising effort directed at adult nonsmokers?

A. No, sir, not of which I'm aware.

Q. Is it your testimony that RJR only markets and advertises to people who already smoke?

A. Yes, sir, that would be my experience with this company.

Q. Other than the current Camel Cash program, are you aware of other forms of cigarette-related merchandise offered by RJR?

A. Not specifically, Mr. Sobol, but from time to time cigarette-related merchandise will be distributed to our field sales force or to -- perhaps to our distributors for use to be -- intended to be packed with cigarettes for sale at retail. Cigarette-related merchandise is -- is sometimes sold or offered to -- to smokers at our sports marketing events. That would be handled through Sports Marketing Enterprises.

Those are a couple of other examples.

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There may be more, Mr. Sobol. I can't recall. Those would be the primary.

Q. What kinds of cigarette-related merchandise have been distributed in California through the Sports Marketing Enterprises during the last year?

A. I don't know specifically, Mr. Sobol.

Q. And what kinds of cigarette-related merchandise have been distributed by the Sports Marketing Enterprises in Massachusetts during the last year?

A. I don't know, sir.

Q. What about since 1990? Do you know what kinds of cigarette-related merchandise has been distributed by the Sports Marketing Enterprises in California during the 1990s?

A. I do not specifically know, sir.

Q. And would the same be true in Massachusetts? You don't know what kinds of sports -- cigarette-related merchandise has been distributed by the Sports Marketing Enterprises division?

A. I do not know, sir.

Q. Do you know the basis for the decisions which RJR has made regarding the

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selection of brands associated with the cigarette-related merchandise it has distributed in the past year?

A. No, sir.

Q. Do you know, other than compliance with the cigarette advertising code, the limitations or restrictions RJR has placed on the types of cigarette-related merchandise it has distributed in the United States?

A. Yes, sir, I have a general understanding of that.

Q. Would that limitation or restriction which you have a general understanding of be one imposed by law?

A. I do not believe that to be a -- the case.

Q. Well, what -- what is that limitation or restriction which you have a general understanding of?

A. Well, beyond the advertising code, Mr. Sobol, which requires that -- that cigarette-related merchandise, the premiums, as I believe the code refers to them, you know, shall only be distributed by mail to smokers who have certified that they are smokers and above the age

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of 21 and shall only be otherwise distributed at -- at retail pack with sale for cigarettes or otherwise to persons 21 years of age or -- or older.

Q. Does RJR -- sorry. I thought you were done.

A. An important element of the Camel Cash catalog that was -- that was not included, and I believe it's Exhibit 4, includes such provisions as -- as the smoker certifications, along with a number of -- of mentions that this offer is only for smokers 21 plus. And that's -- that's an example, sir.

Q. What efforts does RJR make to verify the certification that smokers give that they're over the age of 21?

A. Could you -- could you repeat the question, please?

Q. What efforts does RJR engage in to verify that the certifications given by smokers are accurate? Let me rephrase the question.

A. Yes, sir.

Q. What efforts does RJR engage in to verify that the certification of age over 21 given by smokers are accurate?

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A. Mr. Sobol, it -- it depends on what use is going to be made of -- of that particular smoker's name.

Q. Well, in connection with the Camel Cash program, if someone is filling out an order form and certifies that they're above the age of 21, what efforts does RJR take to verify that they are indeed over the age of 21?

A. Mr. Sobol, the -- the efforts are largely included on the pages submitted from -- from that exhibit. With respect to the -- the clear communication that the offer is for smokers above the age of 21, that the certification copy is clear. As a further deterrent, I believe there's a clause or a phrase on that certification copy that providing false information may be -- may be construed as -- as mail fraud.

Q. Once RJR receives an order form containing a certified statement that the person completing the form is over the age of 21, does RJR engage in any further efforts to verify that that person is indeed over the age of 21?

A. Yes, sir, we do.

Q. And what effort is that?

A. There are a couple of those efforts,

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Mr. Sobol. Once we have a smoker's name and certification statement, we -- totally conversant on the exact process. I'm giving you a general -- my general understanding of it at this stage. Those names will be run against -- I believe it to be the case that we run those against an outside independent database that is designed to identify and screen out or a process is designed to identify and screen out people under the age of -- of 21.

Q. Any further efforts?

A. Yes, there is. Periodically with some degree of frequency, I believe it's every three weeks at this stage, new inbound names are run through a variety of outside independent databases -- I think there may be four or five of those at this point -- with the intent to affirmatively verify that the -- that the -- that the smoker is above the age of 21.

Q. What's -- what's the difference between the first effort and -- and the latter effort? They both run the names against a database? Is there a difference between the databases?

A. Yes, sir, there is. I -- I believe that the -- my best understanding is that the --

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the first effort goes against a -- a database that is named or something close to American Student Listing. We do not have access to that database. This is done with -- in normal matching activities that -- that the database people do. We provide them with the name, the best information we have on their address. That database will come back and tell us, do you have somebody -- is there somebody on here who's under age? If so, that person doesn't proceed any further on our list, on our active mailing list.

The second effort is a more comprehensive effort that is -- that is undertaken to affirmatively age verify a smoker as above the age of -- of 21. So, the first effort, Mr. Sobol, is to -- to design -- is designed primarily to take people off the process of -- of going onto the list. The second is designed to affirmatively age verify them.

MR. OPSITNICK: It's about 12:40. If you want to -- if you've got a few more questions on this topic, then --

THE WITNESS: There are other ways, Mr. Sobol, I should probably add before we conclude this issue, that smokers can -- can

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be age verified on our database. The first of those is site verification by an RJR or independent contractor employee at a sports marketing event, for example, where the individual's age is -- is confirmed through inspecting a copy of the individual's official ID, photo ID.

And the last step that we take to age verify people, the last one I can recall, is where we've had trouble matching an individual smoker on -- on those outside databases to affirmatively age verify for whatever reason. The individual can -- can send us a photocopy of an official ID, along with a certification form, and that smoker can then be added to our age verified mailing list.

That covers a range of that stuff, Mr. Sobol. I'm not sure I've included everything, but I think it's the primary stuff.

MR. SOBOL: Why don't we take a break. You want to come back at 1:30? Is that okay with everybody?

THE VIDEOGRAPHER: Off record at

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12:42.

(Recess 12:42 p.m. to 1:39 p.m.)

THE VIDEOGRAPHER: Back on record at 1:39.

BY MR. SOBOL:

Q. Mr. Blackmer, you're still under oath.

A. I understand, sir.

Q. Yesterday, I don't want to characterize your testimony, but just to let you know where we're going. But yesterday I believe you testified that Mr. Callan Faino is knowledgeable regarding direct mail distribution of free cigarettes?

A. Yes, sir, his group is -- is involved in that type of activity.

Q. And he's in the marketing group?

A. He -- he is in the marketing operations department in the database marketing group.

Q. Okay. Other than the direct mail distribution of free cigarettes, are you aware of any other manner in which RJR has distributed free cigarettes, either in Massachusetts or California within the last five years?

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A. Mr. Sobol, I'm not sure I could tell you with -- with a high degree of certainty that it's been done in Massachusetts and California. It has been done nationally. I would not at all be surprised that it has been done in Massachusetts and -- and California.

Q. What other methods has RJR used to distribute free cigarettes on a national basis other than through direct mail distribution?

A. There are a couple of -- of examples of that that occur to me right off the top of my head, Mr. Sobol. The first of which would involve the distribution of -- of so-called free cigarettes at sports marketing events, for example.

In some instances, that activity is conducted in what we call a pack swap activity in which a -- an adult is -- is confirmed as a smoker by having -- either smoking or having a visible pack of cigarettes on -- on his or her person.

That individual is then asked for a photo ID to verify his or her age as being 21 plus, in which case the -- the adult smoker is then invited to a booth that -- where access is restricted to 21 plus where they may have an interaction with either an RJR employee or an

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employee of an independent contractor about that brand.

They are offered the opportunity to try that brand in exchange for a pack of cigarettes of that individual's usual brand, in such case to use the example Marlboro. If that individual is a Marlboro smoker, they will be given the opportunity to exchange the remaining cigarettes in that pack for, I believe, most often it's two free packs of the -- of the promoted brand.

In the event that that individual happens to smoke one of our RJR's brands, in that instance we allow them to keep their -- their current brand. So, one might define that as being free without any so-called consideration, if you will, that the -- that the competitive smoker might have offered in -- in exchange for the promoted brand. That's one example, Mr. Sobol, of -- of -- of how we do that.

Another example might be in bars and clubs where a similar pack swap opportunity may be involved or the distribution of -- of free cigarettes. Obviously, in those instances we're -- we're following the cigarette advertising promotion code which includes a number of sampling

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provisions.

I should add that in the bars and clubs, that smokers are asked for a photo ID by employees of Reynolds or -- or of -- by their independent contractors, unless that bar or club is carding -- so-called carding at the door to ensure 21 plus are in attendance or only 21 plus are in -- in attendance.

And those would be two other examples of the distribution of free cigarettes, Mr. Sobol. There may be others. That would be the primary activity that I can recall off the top of my head.

Q. Who has primary accountability for the distribution of free cigarettes under these two additional methods which you just described?

A. In the first instance, Mr. Sobol, where the activity is being conducted at one of our sports marketing venues, that would be Mr. Clifton Pennell who heads Sports Marketing Enterprises.

Q. What about the second instance?

A. In the second instance, that is more likely to be the case where the brand business unit is conducting that activity and/or arranging for its conduct. So, in that instance it would -- it would depend on what brand was conducting it.

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Q. Does marketing operations oversee the distribution of free cigarettes in bars and clubs?

A. We do not at present, sir.

Q. In connection with the distribution of free cigarettes at sports marketing events, does RJR engage in distributing free cigarettes other than through a pack swap in those instances where the smoker is not a smoker of RJR brands? In other words, do they ever give away free cigarettes without requiring pack swap?

A. I'm not certain in the answer to that question. I'm -- I -- I don't know, Mr. Sobol. It's my understanding that the -- the primary method of distribution is -- is through the so-called pack swap.

Q. And what do you base that understanding on?

A. I -- I base that on a brief discussion that I had with two employees in -- in the Sports Marketing Enterprises division.

Q. Was that Clifton Pennell and another or no?

A. No, sir, it was not Mr. Pennell.

Q. Who were the other two?

A. Mr. John Powell, Mr. Greg Littell.

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L-I-T-T-E-L-L, I believe, is the spelling of that.
Q. When, to your knowledge, did RJR first engage in distribution of free cigarettes through pack swaps?
A. I don't know the answer to that, sir.
Q. When was the first time you heard of RJR engaging in the distribution of free cigarettes through a pack swap?
A. Mr. Sobol, my first recollection, and I'm not at all sure about this, but my first recollection is -- is sometime in -- in the early '90s, and giving you -- it's a very faint recollection.
Q. Do you know if there was a point in time when the primary method for the distribution of free cigarettes at sporting events was not done through a pack swap?
A. I don't know that, sir.
Q. Now, in connection with the distribution of free cigarettes through bars and clubs, do you know whether or not RJR currently engages in distribution of free cigarettes at bars and clubs where it does not require a pack swap?
A. Mr. Sobol, I -- I believe that -- I believe that there are such instances.

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Q. And what do you base that understanding on?
A. On brief discussions that I had with Mr. Douglas Funderburk and Mr. Tod Holbrook.
Q. Those gentlemen are in the Camel business brand unit?
A. That's correct, sir.
Q. Did Mr. Funderburk and Mr. Holbrook tell you that pack swap is the primary method of distributing free cigarettes in bars and clubs?
A. I don't recall specifically, sir. I don't believe that they did.
Q. Is it your understanding that pack swap is the primary method for the distribution of cigarettes -- free cigarettes in bars and clubs?
A. I'm sorry, sir. I'm having trouble differentiating that question from the previous one.
Q. Before I asked you if you had that conversation with Mr. Funderburk and Mr. Holbrook.
Now I'm asking you whether or not it is your understanding that distribution of free cigarettes by RJR in bars and clubs is primarily done through a pack swap?
A. No, sir, that's not my understanding.

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Q. The distribution of free cigarettes that RJR does in bars and clubs is not primarily through pack swaps?
A. Mr. Sobol, I believe what I indicated earlier was that I -- I couldn't provide you with a knowledgeable answer as to whether that is primary -- the primary means of distribution of free cigarettes in -- in clubs.
I -- I -- in contrast to earlier questions with respect to sports marketing, I -- I do have that understanding, and that's the differentiation I'm making there, sir.
Q. The free cigarettes that are distributed by RJR through direct mailing, is that done in connection with programs such as the Camel Cash program? Let me -- let me strike that question and ask you a different question.
If -- are free cigarettes distributed by direct mail through the Camel Cash program?
A. No, sir, not to my knowledge.
Q. Well, describe for me the circumstances by which RJR distributes free cigarettes through direct mailing.
A. Could -- could you elaborate on circumstances, please, sir?

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Q. What is your understanding of how it is that RJR distributes free cigarettes through direct mailing?
A. My understanding of how RJR distributes free cigarettes through -- through direct mailing is that a brand may have, as part of its marketing plan, a desire to gain trial among competitive adult smokers. And in that instance, they may elect to distribute cigarettes through the mail to adult smokers. And we have verified through those outside or other resources that we talked about earlier to competitive adult smokers.
We will also have, by virtue of that smoker's certification, a -- a request on file that the individual is willing to receive free cigarettes through the mail. That's -- that's a -- a general understanding of -- of how we do that, sir.
Q. Then those persons who are distributed free cigarettes through the mail are only those persons which are on your active mailing list?
A. And who have been age verified through the sources that we talked about earlier, sir.

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Q. Do you know which brands currently have as part of their marketing plan the direct mailing of free cigarettes?

A. Mr. Sobol, I'm not aware that any brand is presently -- presently doing that.

Q. Do you know what the budget was last year for the direct mailing of free cigarettes?

A. I do not, sir.

Q. Would Mr. Faino know?

A. Excuse me. Mr. Faino would have -- excuse me -- Mr. Faino would have access to a portion of that information with respect to the cost of -- of mailing that -- of conducting that mailing with respect to postage. He may have information with respect to the cost of materials for that concerning boxes and any brochures that might have gone in that mailing. Mr. Faino would probably not have access -- immediate access to records concerning the cost of the cigarettes or -- or the taxes which would have been paid on that.

Q. Do you know how much RJR has spent in any of the last ten years on the direct mailing of free cigarettes?

A. I do not, sir.

Q. And do you know the annual

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expenditures in any of the last ten years for the amounts spent on the distribution of free cigarettes at sporting events?

A. I do not, sir.

Q. And do you have -- and do you know the expenditure that RJR has incurred with respect to the distribution of free cigarettes in bars and clubs in any of the last ten years?

A. I -- I do not, Mr. Sobol.

Q. Now, what are the reasons, to your knowledge, that RJR engages in the distribution of free cigarettes in any of these forms?

A. To the best of my knowledge and -- and experience, Mr. Sobol, it would relate back to some of the marketing strategies that we -- that we talked about earlier. For -- for example, gaining competitive trial among adult smokers, as well as in the event that we encounter somebody -- an adult smoker who perhaps has already tried one of our brands, maybe purchasing it part of the time. The objective would be there to increase that smoker's share of purchases in favor of our brand versus a competitive brand.

Q. And you're not involved, sir, in the decisions as to which brands RJR will distribute as

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free cigarettes?

A. I am not, sir.

Q. Okay. Are you able, sir, to identify the instructions given to the third party contractors who participate in the distribution of free RJR cigarettes at sporting events?

A. In general terms I am, sir.

Q. Did you have that discussion with Mr. Powell and Mr. Littell?

A. Not specifically, Mr. Sobol.

Q. What efforts does RJR take to ensure that the third party contractors it hires to distribute free RJR cigarettes at sporting events comply with the instructions that RJR gives them?

A. Among those -- those efforts, Mr. Sobol, are -- are references to the key provisions of the cigarette advertising and promotion code in our letter agreements with those suppliers.

Those include such provisions as samples shall not be distributed to people who -- shall not be knowingly distributed to people who are under the age of 21, nor without reasonable proof to the contrary appear to be over 21.

Restrictions on sampling in -- in

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public places unless the area in which the sampling being conducted is open only to people of legal smoking age.

No sampling within I believe it's two blocks of a public school or playground or other places where youth may congregate, provisions for the security of samples, so that they can't be misappropriated by anyone other than for -- for whom they are -- are intended.

Our letter agreements, I think -- those, which I -- I briefly looked at, make ongoing reference to training obligations for the -- for the contractor with their -- with their employees. There's an explicit understanding in -- in those agreements that any sampler knowingly violating the -- the code will be terminated. There -- there's one more. Just -- if I may have just a second.

There's also a requirement that sampling activities be periodically monitored by members of the independent contractors management and/or RJR employees.

Mr. Sobol, that's a -- that's a list of a number of examples. I may not have covered them all, but those are what I can recall.

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Q. Other than providing instructions to the third party contractors who distribute free RJR cigarettes, whether contained in the letter agreement or some other form, what efforts does RJR take to ensure that the third party contractors are following those instructions?

A. Mr. Sobol, it's my understanding that in the case of sports marketing activities, for example, that representatives, employees of -- of RJR Sports Marketing Enterprises division are at each event and -- and monitoring that activity.

In the case of any sampling activity that's conducted at bars and clubs, it is my understanding that -- that at a minimum -- at a minimum -- excuse me -- management employee of the independent contractor is present there. I'm not sure I answered your question, sir, but --

Q. Are you aware of any other efforts that RJR takes in that regard?

A. Not that I can recall at the moment, sir.

Q. Has RJR ever had an occasion to terminate a third party contractor upon the knowledge that they knowingly violated the terms of their letter agreement?

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A. Mr. Sobol, I'm unaware of any such instance. That does not mean it is not happening. I'm just not aware of it.

Q. Yesterday I believe you testified that the trade marketing group is primarily accountable for the physical distribution of point of sale advertising; is that correct?

A. Mr. Sobol, I don't obviously have that in front me, but I think, if I didn't convey this yesterday, I intended to convey that the trade marketing group and sales planning share responsibility for planning the distribution of point of sale advertising material. Those are not the only parties involved. They would be the primary parties involved in that activity.

Q. Who's primarily responsible for the physical distribution of point of sale advertising within RJR?

A. The -- in -- if by that you mean the physical distribution from RJR or one of its suppliers to a shipping consignee, that would be Mrs -- Ms. Judy McKinney, Judith McKinney, sales and marketing materials operations. That's part of the marketing operations group.

Q. Would the Camel Cash catalog, which

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you say is on display, certain retail establishments across the country be an example of point of sale advertising to your understanding?

A. Mr. Sobol, given my recall of the breadth of the definition that was -- was provided in the deposition notice, it could well be.

Q. What's the purpose of having a Camel Cash catalog on display at a retail establishment?

A. To my understanding, Mr. Sobol, and giving my personal point of view, the -- the -- the reason to have it on display at retail would be that a -- a smoker does not want to wait to get a catalog via other means that we talked about yesterday, which could be via direct mail or could be via a -- a request to an 800 number. But those might involve delays in -- in getting access to the catalog.

Q. Is it your testimony, then, that having a Camel Cash catalog on display would not be to spur interest in perhaps purchasing Camel cigarettes?

A. It might include that as an objective, Mr. Sobol.

Q. Have you ever had any conversations with anyone at RJR regarding the display of the

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Camel Cash catalog as perhaps fulfilling that objective or furthering that objective?

A. None that I recall.

Q. Is the media group in collaboration with -- I forgot their name -- Long, Haymes and Carr, are they primarily responsible for the placement of advertising materials at locations where RJR cigarettes are sold?

A. No, sir, they would not be primarily responsible for that.

Q. Would the business brand units annual marketing plans, to your understanding, contain information regarding point of sale advertising?

A. I would expect to find a -- a strategy or at a minimum a statement regarding a brand's objectives in that regard if -- if one existed. To the extent that it didn't, I would expect to see no reference to it.

Q. And do the business brand units work with trade marketing and sales planning for the execution of whatever point of sale advertising plan is contained in the overall marketing plan?

A. If by that you mean are -- are the brand business units involved in planning the development of -- of such materials, the answer to

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that would be "yes." Are they involved in planning the distribution of that material to a much lesser degree would be the case than they are in the development of the -- of the materials.

Q. The distribution falls mainly under the sales and marketing operations group?

A. The physical distribution, yes, sir, from -- from either here in -- in Winston-Salem or from a supplier to -- to a shipping consignee.

Q. Are you aware, sir, of the point of sale advertising campaigns engaged in by RJR over the past ten years?

A. Not with any degree of specificity, sir.

Q. And do you know whether or not point of sale advertising campaigns are developed in connection with a specific geographical region?

A. Mr. Sobol, I don't know explicit -- specifically an answer to that. I'm -- I'm trying to recall whether I have any -- any memory of that and -- and at the moment I don't, sir.

Q. Do you know the content of any of the point of sale advertising marketing plans engaged in by RJR in Massachusetts over the last ten years?

A. No, sir, not specifically.

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Q. And are you aware of the content of the point of sale advertising marketing plans engaged in by RJR in California over the last ten years?

A. No, sir.

Q. Do you know what types of promotional materials RJR has offered or provided to retailers in Massachusetts over the last ten years?

A. I do not, sir.

Q. And do you know what types of promotional materials were offered or provided to retailers in California over the last ten years?

A. I do not.

Q. Do you know what incentives or compensation or consideration were given retailers in Massachusetts to participate in RJR point of sale advertising campaigns over the last ten years?

A. Not specifically, sir.

Q. And do you know what incentives, compensation, or consideration retailers in California have been provided by RJR in order to participate in its point of sale advertising campaigns?

A. Not specifically, sir.

Q. Do you know that -- what criteria the

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business brand units look at in order to determine the category or location of retailers selected to participate in point of sale advertising?

A. Typically, Mr. Sobol, that specific activity is -- is not something I -- I believe that one would find the brand business units involved in to a high degree with -- with a possible exception of -- of collaborating with the trade marketing and sales planning groups on outlets characterized as -- as pack outlets, primarily package sale outlets versus carton sale outlets.

For example, a -- a retail outlet falling into a category that -- that one might classify as convenience and -- and gas outlet would typically tend to sell the majority of its cigarette volume by the pack due to the nature of -- of the trade; whereas, a supermarket that -- that sells cigarettes, for example, would tend to have a predominant amount of its cigarette volume sold by the carton.

I would -- I might expect to see brand business units engaged in distinctions on -- on that criteria with discussions with the trade marketing group and the sales planning group.

Q. Are you aware of any other criteria

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that any group within RJR would look at, determine the category or location of retailers selected for point of sale advertising?

A. In -- in general, no, sir.

Q. Are you aware of any efforts that RJR takes to insure compliance by retailers or distributors with the arrangements or agreements regarding point of sale advertising?

A. Mr. Sobol, I need some help on "arrangements, agreements."

Q. Are you aware that RJR enters into any conditions with retailers or distributors regarding point of sale advertising?

A. I'm generally aware of that, sir.

Q. And do you know what efforts RJR engages in to police those arrangements or agreements?

A. Mr. Sobol, I believe it's the case that it's up to the individual RJR sales rep to insure what we call compliance with -- with those agreements.

Q. Do you know what RJR's total annual expenditures are for point-of-sale advertising?

A. I do not, sir.

Q. Do you know what RJR's annual

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expenditures for point-of-sale advertising is in Massachusetts?

A. I do not, Mr. Sobol.

Q. And do you know what RJR's annual expenditure for point-of-sale advertising is in California?

A. I do not, sir.

Q. Do you know whether anyone at RJR undertakes any studies to evaluate the effectiveness of its point-of-sale advertising?

A. No, sir, I can't be sure of that.

Q. Can you describe, please, all the efforts that RJR makes to ensure that its point-of-sale advertising does not reach minors?

A. I'm aware of one activity that we -- that we do, Mr. Sobol, in that regard. Certain posters commonly called one-sheet posters, which one would typically classify as -- as point of sale as opposed to outdoor advertising, we treat that under the same restriction as we -- as we do for -- for outdoor advertising with respect to the cigarette advertising code because of its 500-foot distance restriction.

Q. From a public school or playground?

A. Yes, sir.

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Q. Does RJR have some sort of information that minors only frequent retail shops within 500 feet of a public school or playground?

A. No, sir, I don't -- I'm not aware of any such information.

Q. Other than providing the Surgeon General warning on point-of-sale advertising, are you aware of any other efforts engaged in by RJR to inform the public of the health risks associated with smoking in connection with its point-of-sale advertising?

A. Beyond the warnings, I can't think of anything right off the top of my head, Mr. Sobol, but the warnings, sir, are -- are extensive. Our company's view is that they are adequate in -- in one way, shape, or form. Cigarette health warnings have been around, I believe, since the mid-'60s.

MR. SOBOL: We can take a break for a minute while I go over my notes.

THE VIDEOGRAPHER: Off record at 2:28.

(Recess 2:28 p.m. to 2:39 p.m.)

THE VIDEOGRAPHER: We're back on record at 2:39.

BY MR. SOBOL:

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Q. Mr. Blackmer, have you ever heard of the term "advocacy advertisement"?

A. Mr. Sobol, I don't recall hearing those two -- those two terms used in conjunction with one another.

Q. Are you aware of efforts RJR has made to publish or place articles in the popular press regarding smoking-related issues?

A. Not in any detail, sir.

Q. Well, what is your knowledge about that subject?

A. I have a very vague recollection of reading some press reports about them, sir. I can't -- can't recall when any -- any of that advertising may have -- may have run.

Q. Are you aware, sir, of efforts made by RJR to promote through some form of advertising smokers' rights?

MR. OPSITNICK: Object to the characterization of those efforts as advertising.

THE WITNESS: Would you repeat the question, please, sir?

BY MR. SOBOL:

Q. Are you aware of any efforts made by

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RJR to promote smokers' rights through any form of print media?

A. In general I am, sir.

Q. And is the marketing operations group at all part of that effort?

A. We have not been, sir.

Q. What is your understanding of RJR's efforts to promote smokers' rights through print media?

A. My recall, Mr. Sobol, is that a series of -- of materials that I'm not sure I would -- I would characterize them as promoting smokers' rights ran in some publications in the mid-'90s. I don't recall specifically any -- any of the content of -- of those materials.

Q. And is it your testimony that the marketing operations group did not assist in the execution and placement of those materials in publications?

A. Mr. Sobol, I cannot be sure that we were not in some way asked for assistance on that. What I can tell you is that the marketing operations group was not -- it would not have what I would call anything close to primary involvement in it.

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Q. And by "in that," are you referring to the development of the materials or the placement of --

A. I believe your question was the -- the placement --

Q. Yes, it was. I just want to make sure we're clear.

A. Right.

Q. Do you know who at RJR develops smokers' rights materials?

A. I believe it to be the case that that is done in the external relations department. I'm not sure there is a -- a current effort in that regard.

Q. Who's the current head of the external relations department?

A. Mr. Tommy Payne.

Q. Is the external relations department part of marketing?

A. No, sir, it is not.

Q. Who does Mr. Payne report to?

A. I believe Mr. Payne reports to Mr. Schindler.

Q. Have you ever heard of the "Of Cigarettes and Science" campaign --

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A. No.

Q. -- that took place in 1985?

A. I don't -- I don't recall anything about that campaign. I was -- I was not in the continental United States in 1985.

Q. Do you have an awareness that a campaign such as that existed in 1985?

A. Mr. Sobol, at this point I -- I could not honestly characterize that as awareness.

Q. Now, the person who would have primary accountability and the most knowledge regarding sponsorship of sporting or spectator events would be Mr. Pennell; is that right?

A. That would be correct, sir.

Q. And the Sports Marketing Enterprises is a separate group in the marketing department; is that right?

A. Sporting Marketing Enterprises, I believe, is a division of R.J. Reynolds Tobacco Company from a structure standpoint. Mr. Pennell reports to Ms. Beasley who is executive vice president in marketing.

Q. Who would be in a better position to answer questions on what RJR's expenditures for advertising is at sporting events, you or

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Mr. Pennell?

A. I believe that would be Mr. Pennell.

Q. And would he have more knowledge than you regarding the decisions as to which sporting or spectator events to promote or sponsor or place advertisements at?

A. Yes, sir -- I'm sorry. Could you repeat the question, please.

Q. What sporting events has RJR sponsored in Massachusetts, if any, within the last five years?

A. The only involvement in supporting events that I can specifically recall right now, I believe, is part of the Winston racing series, a NASCAR division. I believe there's a -- a track in a town called Agawam, Massachusetts. I'm not sure I'm pronouncing that right, but that's all I can recall right off the top of my head, Mr. Sobol.

Q. Who would have more knowledge as to which sporting events RJR has sponsored in Massachusetts, you or Mr. Pennell?

A. I would imagine Mr. Pennell would, sir.

MR. SOBOL: Okay. I'm going to make a quick statement for the record, then I'm

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going to reserve our rights to inquire further as to the sponsorship or advertising at sporting or spectator events upon the later production of either Mr. Pennell or another witness who has direct firsthand knowledge regarding RJR's efforts on that subject.

MR. OPSITNICK: Reynolds reserves the right to make objection at such time to the request for Mr. Pennell.

BY MR. SOBOL:

Q. What sporting events has RJR sponsored in California within the last five years?

A. Mr. Sobol, I can't give you a complete list of that activity, but I can give you a few examples of --

Q. Would Mr. Pennell be in a better position to provide a more complete list than you?

A. I would imagine so, sir.

Q. And would Mr. Pennell be in a better position than you to provide information regarding the basis and criteria by which RJR chooses to sponsor sporting events or other spectator events?

A. I would imagine so, sir.

Q. Are you aware of any RJR policies

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which specifically concern the sponsorship of sporting or spectator events?

A. Well, sir, to the extent that any such activities were -- fell under the cigarette advertising promotion core code, it would clearly be our policy that we comply with that code. And there may be other policies of which I'm -- I'm unaware of or can't recall right now.

Q. Other than the advertising code, who'd be in a better position to provide information regarding restrictions that RJR may impose on sponsorship of sporting or spectator events, you or Mr. Pennell?

A. Mr. Pennell.

Q. Pennell?

A. It is Pennell, yes, sir.

Q. Excuse me.

In regard to RJR's catalog advertising, I believe you testified yesterday that Mr. Faino is the person most knowledgeable regarding that subject; is that right?

A. Yes, sir, insofar as -- as I believe we -- we touched on this morning as well. Insofar as we are -- catalog advertising is -- is sent by direct mail to -- to consumers. I will also tell

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you that within the -- the marketing operations group, Ms. Judy McKinney's group, sales and marketing material operations, manages the, what we call, fulfillment of any catalog offers.

Q. Are you aware of whether or not RJR advertises in catalogs other than those which it publishes?

A. I didn't understand the last part of your question, sir.

Q. Well, the Camel Cash catalog, that's a catalog published by RJR; is that right?

A. Yes, sir.

Q. And does RJR have any other catalogs currently that it publishes?

A. Not that I can recall, sir.

Q. And does RJR advertise in catalogs other than those which it publishes?

MR. OPSITNICK: Object to the characterization of premium items that it may appear in other catalogs as advertising.

THE WITNESS: Would you repeat the question, please, sir?

BY MR. SOBOL:

Q. Yeah.

I just want to know if -- if RJR

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places ads in catalogs other than those they publish in?

A. To the best of my knowledge, there's no other advertising in -- in the sense that we have talked about it here with respect to print advertising, for example, directed to consumers that -- that RJR may -- may sponsor or pay for.

Q. Is RJR cigarette-related merchandise available through catalogs other than that which -- those catalogs which RJR publishes?

A. If by that you mean is it offered to consumers, I don't believe that it is, sir.

Q. And you're trying to differentiate between catalogs which may be available to distributors or retailers? Is that the nature of your distinction?

A. Yes, sir.

Q. I believe you testified yesterday that you don't have any knowledge regarding RJR's lobbying activities in Massachusetts; is that correct?

A. That's correct, sir.

Q. Aside from the specific content of those lobbying activities, do you have any information regarding the expenditures that RJR has

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incurred in regard to lobbying or lobbying-related activities in Massachusetts?

A. I have none, sir.

Q. Can you tell me, sir, what the fulfillment group does in marketing operations?

A. The fulfillment group in -- in marketing operations manages the process of order fulfillment, which includes activities such as order receipt, order qualification, verifying whether proofs -- proofs of purchase have -- have been sent in correct amount or -- or money where that applies, forecasting inventory for fulfillment programs, and generally managing the activities of independent contractors who -- who perform some of those services for us.

Q. What is the function of the consumer marketing group?

A. If by that you mean the consumer relations group --

Q. Is it the consumer relations group that's within marketing operations?

A. It is, sir.

Q. Okay. I'm sorry.

What -- what's the function of consumer relations group within marketing

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operations?

A. The -- the primary function of the consumer relations group is to resolve consumer issues with our products or our consumer marketing programs that smokers may have when they contact us and to do that in a -- a fashion that satisfies that consumer at the end of that contact.

Q. How many employees are in the consumer relations group?

A. To the best of my recollection, we have 27 employees, full-time employees in that group, sir.

Q. And just so I understand, is it that the consumer relations group will only resolve consumer issues when contacted by a consumer or smoker?

A. I'm not sure I understand the question, sir.

Q. What are -- what are some of the consumer issues that have come up that the consumer relations group has addressed within the last year?

A. A -- a typical range would be, I have -- I had a problem with my last pack of XYZ cigarettes. The filter did not stay attached to the tobacco rod. I had five cigarettes in my pack

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that were not -- that had no tobacco in them. The last pack of brand XYZ I bought tasted dry and stale. I think it may have been old.

Those are examples of so-called product flaws, Mr. Sobol, that the group would address.

Other kinds of consumer issues would perhaps involve a smoker contacting us about nonreceipt of a premium order, for example, for -- for Camel Cash. For the most part, that call would then be subsequently resolved by the independent contractor who handles the fulfillment for us for that -- for that program. But it might involve a -- a call from an individual who is, or these could either be telephone calls or written correspondence from a smoker who is or -- or perhaps previously was on our active mailing list. I haven't received anything from brand XYZ in -- in the past several months.

Those are examples of the kinds of issues that -- that come up, Mr. Sobol, in -- into that group.

MR. SOBOL: Okay. Let's change the tape.

THE VIDEOGRAPHER: This concludes

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tape number five of the Edward Blackmer deposition. The time is 3:04.

(Recess 3:04 p.m. to 3:06 p.m.)

THE VIDEOGRAPHER: This is tape number six of the Edward Blackmer deposition. The time is 3:06.

BY MR. SOBOL:

Q. Mr. Blackmer, does the consumer relations group address consumer issues regarding the content of the advertisement of RJR cigarettes?

A. I'm sorry. Could you repeat the question, please, sir?

Q. Does the consumer relations group have, as part of its responsibility, dealings with consumer issues that may arise regarding the content of RJR cigarette advertisement?

A. If by address you mean would consumer relations pass along to a brand business unit, for example, an issue that a consumer raised regarding advertising, I believe that would be the case, sir.

Q. But the consumer relations group does not itself take any efforts to resolve the consumer issues regarding the content of RJR cigarette advertisement, other than to pass it along to the brand business unit?

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A. Not regarding the content, Mr. Sobol, I wouldn't think so.

Q. Do you know approximately how many complaints or requests for information the consumer relations group receives in a given day?

A. Across all subject matters? I can't recall specifically, Mr. Sobol.

Q. Enough to keep 27 people busy full-time?

A. Yes, sir, but not all of those people are -- are on the phones or preparing responses to written -- written correspondence.

Q. Do you know if the business -- do you know if the brand business units have personnel specifically dedicated to the task of dealing with consumer issues regarding the content of RJR cigarette advertisement?

A. No, sir, not specifically, but I -- my -- I would hazard a guess that the head of that brand business unit considers that a personal accountability that they have. That's just my opinion on that matter, sir.

Q. Mr. Blackmer, I want to discuss with you briefly a subject which we left yesterday, and that is the six or so years that you were engaged

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in advertising strategy and execution for RJR tobacco between approximately July of '87 and July of 1993.

I'm wondering, sir, during the time that you were the vice president of the brand business unit or a vice president of the brand business unit what the advertising strategy was for Camel cigarettes.

A. I don't recall specifically, Mr. Sobol.

Q. How long were you involved in the advertising strategy for Camel cigarettes?

A. Approximately three to four years, sir.

Q. What is your memory what the advertising strategy was for Camel cigarettes during that three or four years of your life?

A. My memory is, Mr. Sobol, that our advertising strategy contained concepts of -- to convince adult smokers that Camel is a more relevant and contemporary brand than it was -- perhaps had been in the past and that Camel had a smoother taste than, again, historical perceptions of the brand might suggest. That's -- that's an overview. That's based on memory now going back

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several years, sir.

Q. Do you recall any of the images employed in the Camel cigarette advertising to convey the concept that it was a more relevant and contemporary brand?

A. I recall some of them, sir.

Q. And what were they?

A. They, in general terms, based -- based on my recall, would have involved the -- the Joe Camel character participating in -- in activities that would have at the time been -- been considered contemporary that -- that young adult -- younger adult smokers could relate to. It would have involved the character socializing with -- with other characters in the advertising. That's just a broad example there, sir.

Q. What were some of these contemporary activities that Joe Camel was participating in were designed to convey the message that Camel cigarettes were a more relevant and contemporary brand?

A. One example, Mr. Sobol, is riding on a motorcycle, riding in a sports car, automobile. It might have involved playing cards with -- with other characters, for example. Source of my -- my

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memory is -- is not that good on that subject. That's all I can recall right off the top of my head.

Q. What three or four years were you involved in the advertising strategy for Camel cigarettes?

A. I cannot remember when I -- exactly when I started on the Camel brand. I had some other accountabilities at that -- at that time. It was either 1989 or 1990, sir, up until July of 1993.

Q. And the riding on motorcycle, riding in a sports car, playing cards with other characters were all activities that -- directed at those that a younger adult smoker could relate to?

A. Yes, sir, importantly adult smoker activities.

Q. Adult smoker activities or younger adult smoker activities? Did you say younger adult smokers earlier?

A. I may have, sir.

Q. Were these activities of riding on a motorcycle, riding in a sports car, and playing cards with other characters designed to be those kinds of activities that a younger adult smoker

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could relate to?

A. Yes, sir, as well -- as well as -- Mr. Sobol, I'm troubled by your distinction between younger adult and adult smokers. I don't understand your -- your distinction there, sir.

Q. Was portraying Joe Camel in these kinds of activities, which you described, done in an effort to convey to younger adult smokers that smoking Camels was more relevant and contemporary?

A. Yes, sir, I believe it -- I believe it was, but I also have to include that we -- that -- that, as I recall, it was not simply a -- a younger adult strategy, which is -- which is, I believe, what your question implies or suggests.

Q. Is it your testimony that the Joe Camel character was not targeted towards younger adult smokers?

A. My testimony wasn't targeted exclusively to young adult smokers, sir.

Q. Was the Joe Camel character and the activities in which RJR portrayed Joe Camel engaging in designed to specifically appeal primarily to younger adult smokers?

A. Not that I recall, sir.

Q. So, when you testified earlier that

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Joe Camel participated in these contemporary activities that younger adult smokers can relate to, that was just a mistake? Is that your testimony?

MR. OPSITNICK: Object to the characterization of his earlier testimony.

THE WITNESS: Would you repeat the question, please?

MR. SOBOL: Read it back.

(QUESTION WAS READ BACK)

THE WITNESS: Mr. Sobol, our marketing programs are designed to really address audiences that -- that include our current franchise and competitive adult smokers as well. For -- for me to characterize the Joe Camel advertising as being exclusively or even primarily targeted to that, to younger adult smokers, I -- I think would be a mistake on my part.

BY MR. SOBOL:

Q. Other than the Joe Camel --

A. I would like to add, sir, that this has been a quite a number of years ago, that I've been involved in a number of other activities since then. My recollection is -- is limited, sir.

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Q. Other than the Joe Camel images, what other images, if any, did RJR use to convey the concept to smokers that smoking Camels was more relevant in contemporary brand than in the past?

A. Mr. Sobol, I believe at the time for, or at least for -- for part of those years, Camel was a sponsor of some sports marketing activities that might or might not have included or -- or had -- had sport materials, images that -- that use the -- the Joe Camel character.

I'd like to take a minute break or so, if I could.

MR. OPSITNICK: Okay.

THE VIDEOGRAPHER: Off record at 3:24.

(Recess 3:24 p.m. to 3:30 p.m.)

THE VIDEOGRAPHER: We're back on record at 3:30.

BY MR. SOBOL:

Q. Mr. Blackmer, during the time that you had involvement in developing the advertising strategy for Winston cigarettes, can you tell me what that strategy was?

A. Mr. Sobol, that is probably nine to ten years ago. I have very little recall of what

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that strategy was at the time.

Q. During what years were you responsible or did you participate in developing the advertising strategy and execution for Winston cigarettes?

A. Sir, that would have begun in July of 1987, and I'll have to hazard a guess that it -- that may have concluded by July of 1989 or -- excuse me -- 1988. I don't think it was much more than a year that I was involved on Winston.

Q. Okay. What's your memory of what the advertising strategy was during that period of time?

A. For Winston, sir?

Q. Yes, sir.

A. What little recollection I have of that, Mr. Sobol, would have -- would relate to convincing adult smokers that Winston is a genuine or honest or real tasting product for genuine and real people. That's -- that's all I recall at this juncture, Mr. Sobol.

Q. And what images were used in the advertising to convey that Winston cigarettes were genuine, honest, and real tasting for genuine, real people?

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A. I recall the visual images including such things as people involved in -- in everyday activities such as undertaking a -- an apartment move by themselves, at a backyard barbecue, restoring an old automobile in -- in the use of -- of people in wardrobing that were in contrast to maybe some general consumer advertising at that time, not flashy, but more everyday in -- in its -- in its look and appearance. That's my -- my general recollection of the images used, sir.

Q. What information about the product would depicting an apartment move convey to the consumer?

A. I'm not sure that depicting an apartment move would convey much about the -- about the product. The -- as I recall, sir, all the advertising, to the best of my knowledge, included the -- the copy lines, such as real people, real taste.

So, in that instance, the -- the advertising probably would have relied on the copy, the words to convey that message. My recall is, and I cannot be sure of this, that that served as more as reinforcement, because that is the -- that at the time was the -- was the way that smokers

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tended to perceive the Winston product, a genuine tasting product delivering real taste.

I'm sorry, sir. My recollection on that is -- is hazy at this point.

Q. Now, what information about Camel cigarette would depicting Joe Camel engaged in contemporary activities accomplish? Let me rephrase the question. I'm not sure it came out correct.

Did depicting Joe Camel in contemporary activities, in your opinion, communicate any information about a Camel cigarette?

A. In my opinion, little would – would have been conveyed about the -- about the product by the -- by the depiction of the activities, sir. I think, best of my recollection, the preponderance of -- of advertising during my time on Camel used a -- made copy line that by and large, I think, was – was a smooth character which was intended to refer to the product as – as well as the Joe Camel character itself. And, as I recall, although I don't – can't – can't be specific about this, consumer advertising feedback was -- was consistent with that.

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Q. And what was the advertising strategy, to the best of your recollection, for Salem cigarettes during the time that you participated in developing the advertising strategy for that cigarette?

A. To the best of my recollection, Mr. Sobol, it would -- it would have been to convince adult smokers that Salem was the most refreshing cigarette available.

Q. Is that the extent of your memory of the advertising strategy for Salem that you participated in developing?

A. Yes, sir, in a broad context. Again, that was quite a number of years ago. I think that the timetable was consistent with my time working on -- on Winston as well.

Q. Approximately a year from July of '87 to July of '88.

A. It may – Salem may have extended beyond that for another year or so.

Q. Right.

And what visual images was used in the advertisement for Salem to convey the notion that Salem was the most refreshing cigarette available?

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A. To the best of my recollection, Mr. Sobol, visual images would have included refreshing symbols designed to -- to reinforce that -- that product feature that is -- that is often associated with -- with menthol cigarettes.

For example, large waves, waterfalls, blocks of ice, icebergs are just a few that – that I remember with – with application of this -- the integration, if you will, of the Salem logo into -- into that symbol of -- of refreshment. That's the best I can recall, sir.

Q. And did you participate in developing an advertising strategy for More cigarettes?

A. Mr. Sobol, I honestly cannot recall whether we developed -- your question implies that we -- we developed a strategy and consequently developed a new or different advertising. I -- I honestly cannot recall whether we did that on -- on More during my -- my time on that brand.

Q. Were you involved in the execution of an existing advertising strategy for More cigarettes during the time that you were the VP of brand business unit and the earlier incarnations of that same position?

A. To the best of my recall, that would

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be correct, sir.

Q. Okay. What was the advertising strategy in place for More cigarettes during that time?

A. Mr. Sobol, I'll be perfectly candid with you, I have almost no recollection of that.

Q. None whatsoever?

A. I'm sorry, sir. I'm drawing a blank.

Q. How many years were you involved in the execution of the existing advertising strategy for More cigarettes?

A. Hazard a guess, sir, and say it was two years.

Q. When was that?

A. It would have begun in July of 1987. And if it was two years, again, that's a guess. It probably would have concluded mid-1989.

Q. When you began participating in the advertising strategy and the execution of advertising strategy concerning Camel cigarettes sometime in 1989 or 1990, did you have any responsibility for any other brands at that point?

A. I believe for a time, sir, I had Salem in overlap with -- with Camel.

Q. After you no longer had

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responsibility for Salem but you continued with your responsibility regarding Camel cigarettes, did you have responsibilities for any other cigarette brands?

A. I don't believe so, sir.

Q. At what period of time did you have involvement in the advertising strategy or the execution of the advertising strategy for Now cigarettes?

A. To the best of my recall, Mr. Sobol, that would have been -- been consistent with the More brand.

Q. Would the same be true for Vantage cigarettes?

A. Mr. Sobol, I don't remember when I picked up responsibility for -- for Vantage to be -- to be specific.

Q. Do you remember what the advertising strategy was for Now cigarettes during the period of time that you participated in either developing the advertising strategy or executing the existing advertising strategy?

A. Mr. Sobol, as I recall, the advertising strategy for Now cigarettes at the time was to communicate that Now cigarettes offered the

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lowest levels of tar and nicotine available.

Q. What visual images were used in connection with Now cigarette advertising during the period of time that you were involved?

A. Mr. Sobol, as I recall, Now had established itself as a primary competitor to the Carlton brand. And most of the visual images I recall were -- were used tend to involve a Now brand package and a Carlton brand package in -- in a comparative context, if you will.

Q. Do you recall what the Vantage advertising strategy was during the period of time that you had some responsibility in that regard?

A. One effort that I do recall, Mr. Sobol, was a -- an effort to encourage -- was an effort to convince adult smokers that Vantages, as I recall, Vantage -- it may have involved Vantage Ultra Lights taste was either as good as or -- or superior to that of a -- of the Marlboro Lights brands of our -- of our competitor Marlboro.

Q. And what visual images did RJR use in its advertising to convey that Vantage or Vantage Lights tasted as good or better than Marlboro Lights?

A. My recollection of the visual images

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there, Mr. Sobol, were primarily the use of -- of brand packaging for each of those -- each of those brands.

Q. What was it about the Vantage brand packaging that would convey a better taste than Marlboro Lights?

A. My recollection of the visual treatment was that the -- the -- the Vantage or the Marlboro Lights pack was subordinated, if you will, relative to the -- the Vantage Ultra Lights pack in -- in direct answer to your question, but I -- my -- my recollection is it was more the copy approach that conveyed that -- that advertising message than it was the visual message there.

Q. Are you aware of any information within RJR regarding the tar and nicotine yields that a smoker may achieve that are different than the FTC yields?

A. No, sir, I am not.

Q. Are you aware of any information within RJR that tar and nicotine yields derived through the FTC method are not accurate?

A. Could you repeat the question, please, Mr. Sobol?

Q. Are you aware of any information,

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memoranda, or study done by or on behalf of RJR wherein it is disclosed that the tar and nicotine yields derived through the employment of the FTC method is inaccurate?

A. No, sir, I am not.

Q. Are you aware of any advertisement in the history of RJR that has contained information informing smokers that the yields of tar and nicotine may be different than those obtained through the FTC method?

A. No, sir, I have no recall of anything like that.

MR. SOBOL: I just want a couple of minutes to go over my notes.

THE VIDEOGRAPHER: Off record at 3:54.

(Recess 3:54 p.m. to 4:05 p.m.)

THE VIDEOGRAPHER: Back on record at 4:05.

MR. SOBOL: Okay. At this time on behalf of the State of California and the Commonwealth of Massachusetts, we're going to reserve our rights to require further designees knowledgeable as to the topics listed in the deposition notices generally,

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and further information pertaining specifically to Massachusetts and California.

I have received some representations from counsel, both in California and here today, that they will agree to comply with reasonable requests for further designees. And upon that reservation, upon those representations, prepared to suspend the deposition at this time.

MR. OPSITNICK: Okay. Reynolds specifically reserves the right to object to any further designees under the 30(b)(6) notice in Massachusetts and the 2025(d) notice in California on the grounds that the notice was exceedingly overbroad and called for witnesses that would have information that would be preempted or could not lead to the discovery of admissible evidence or could not result in any cause of action.

MR. SOBOL: I understand your statement, Mr. Opsitnick, but I guess I want clear for the record that you have agreed to entertain reasonable requests to produce further designees; is that correct?

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MR. OPSITNICK: That is correct.

MR. SOBOL: Okay. All right. We'll suspend on that basis at this time.

Thank you very much, Mr. Blackmer, for your time.

THE WITNESS: You're welcome, sir.

THE VIDEOGRAPHER: This concludes the deposition of Mr. Edward Blackmer. The time is 4:07.

(Signature reserved.)

(Whereupon, at 4:07 p.m., the taking of the instant deposition ceased.)

_____
Signature of the Witness

SUBSCRIBED and SWORN TO before me this _____ day of _____, 19__.

_____
NOTARY PUBLIC

My Commission expires: _____

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ERRATA SHEET

RE: St. of California v. Philip Morris, et al.
DEPOSITION OF: Edward M. Blackmer

Please read this original deposition with care, and if you find any corrections or changes you wish made, list them by page and line number below. DO NOT WRITE IN THE DEPOSITION ITSELF. Return the deposition to this office after it is signed. We would appreciate your prompt attention to this matter.

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CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)

COUNTY OF GUILFORD)

I, GERALYN M. LAGRANGE, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

GERALYN M. LAGRANGE
Registered Professional Reporter
Notary Public in and for
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